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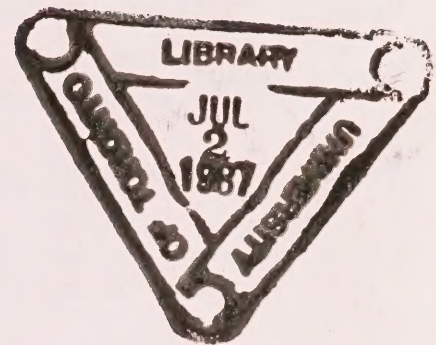




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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
ORGANIZATION  
TUESDAY, FEBRUARY 3, 1987





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Poirier, J. (Prescott-Russell L)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 3, 1987

The committee met at 4:20 p.m. in room 228.

ORGANIZATION

Mr. Chairman: We have a quorum and we can get under way. This is intended to be an organization meeting to determine how we are going to handle the scheduling, advertising and budgeting for Bill 154.

The first item of business is to schedule the weeks we might be able to sit. It has been suggested it would take us four weeks in total, two of which would be spent here in Toronto and two would be travelling weeks. I am open to committee members making suggestions now and we will see if we can get an agreement on what dates we propose to sit.

Ms. Fish: Are you saying four weeks of hearings?

Mr. Chairman: That was the original proposal. Through some of the earlier discussion that was going on, I understand the weeks originally proposed have been changed.

Clerk of the Committee: No, we could go ahead.

Mr. Chairman: If you want to write these down, the weeks originally proposed--and this was attempting to get around any of the conflicts Ms. Gigantes and Ms. Fish might have--were February 16, March 2, March 30 and April 6.

Ms. Fish: For hearings?

Mr. Chairman: Yes. The first two weeks would be here at Queen's Park.

Ms. Gigantes: May I ask where this proposal came from?

Mr. Chairman: Yes. It came from the clerk in looking at the availability of time and the other committees.

Ms. Gigantes: When we say hearings, do we mean public submissions plus clause-by-clause discussion?

Clerk of the Committee: That depends on the response to the advertisement and how many people you want to hear from.

Ms. Gigantes: That is right. I propose that we look for roughly two weeks of public hearings and two weeks of clause-by-clause debate, with a break in between.

Mr. Chairman: In your two weeks of public hearings, are you including the travelling as well?

Ms. Gigantes: What travelling?



Mr. Chairman: It was originally suggested that there may be certain parts of the province we may wish to go to, such as the fine community of Ottawa or perhaps the north and perhaps a community in the west.

Ms. Gigantes: Who suggested it?

Mr. Chairman: The chairman, for one.

Ms. Gigantes: I was a member of the steering committee and I never heard the suggestion.

Mr. Chairman: If you do not wish to travel, that is entirely up to you.

Mr. Ward: On that point, I do not think we should lose sight of the fact that, in terms of hearings relative to the issue--and I recognize that is not the same as hearings relative to the bill--there has been extensive public consultation. There have been over 212 submissions to the green paper panel. There were approximately 48 submissions received on Bill 105, some of which dealt with the issues that are in Bill 154.

Although in many circumstances it is better when a committee travels, I do not believe it is necessary in this case. We can invite submissions and do it here and proceed on a little quicker basis than travelling throughout the province might entail.

Mr. Chairman: As chairman, the only thing I need to know from the members of this committee is whether you intend to travel. We have to know about that for the purposes of establishing our budget. If you do not intend to travel or if you do not feel there is a need to take the message into other parts of Ontario, so be it. We can remove that portion of the expenditure from the budgeting exercise.

Ms. Fish: There may be some merit in doing a few days out of Toronto. I am thinking of the northwest. It might be a situation of looking at northwestern Ontario and possibly down in the Windsor area in southwestern Ontario, if it could be accommodated without a lot of difficulty for the committee or dead time on the actual travelling. With a limited break, I am concerned that we take as much opportunity as we can to work on this bill.

I do not know what response we will get to the ads, but I think 12 hearing days over three weeks might be a reasonable target into which we could put the various respondents who might wish to speak to us. If we can schedule it, I would also hope to look at two weeks or thereabouts, up to 10 sitting days, for clause-by-clause debate prior to coming back.

I have looked at an informal proposal from Ms. Gigantes and played with it a little bit, given some of the different dates of the House sittings. It does not acknowledge any conflict with any other committee--therefore, it does not look at all like the clerk's fine effort--but it does try to aggregate all the hearings into two consecutive weeks. It then provides a break which will, among other things, afford members the opportunity of digesting the hearing material and drafting any amendments that might be appropriate. Then there are a couple of clause-by-clause weeks back to back. I will stop for a moment with those thoughts. I know Ms. Gigantes wants to speak to them.

Ms. Gigantes: I would like to comment on the two proposals Ms. Fish has just made. One is that we have set up a schedule that would, according to

the clerk's estimates of what we can do in terms of placing ads, begin our hearing process on February 23. I would be agreeable to sit during the weeks of February 23, March 2 and March 9. Then we could have a two-week break, which would accommodate both the March break--the school break, which I am presuming members would like to spend with their families--and the following week, which will be cut short. We could sit the following week of March 23 if we wanted to, but it would be good to have a working week and leave the March 23 week open to work on amendments and circulation of amendments.

We could come back for the weeks of March 30 and April 6 and do the bill clause by clause, if that is agreeable to other people. The following week, starting on April 13, leads through a week in which both Passover and Good Friday occur. It would be wise if we could wrap up before then, so that by the time we get back to the House on April 21 or 28 we would have a bill ready for third reading.

1630

If that schedule suits people in a general way, I would also like to propose that we not travel but allocate a budget which can be offered to groups we feel will be important to hear, offer them the capability of coming to Toronto, if all our sessions are in Toronto, and that we have the capability of having night sittings if there are such groups. If there are women who are at work during the day and if the only time they can make themselves available here in Toronto is in the evening, then we should think about making that accommodation. It would be a lot cheaper to have groups come to us than to have this committee travel, particularly when we are talking about groups of women who are not high livers, who will be here for a brief time and who will likely not wish to stay over in accommodation in Toronto, but rather to get back home.

Mr. Chairman: If I may suggest, those are the very types of groups we would attempt to accommodate by travelling.

Ms. Gigantes: I have no interest in travelling. I do not think it is necessary, because the green paper process took this issue right across the province. If we are going to try to get this bill wrapped up before an election this spring, then we have to dedicate ourselves to try to get the work done during the break.

Mr. Chairman: Let me make it clear that I have no particular anxiety or enthusiasm about travelling north or to other parts of Ontario during the winter months. I am just as amenable to sitting comfortably in Toronto and having everyone travel the many miles it would take them to come see us. The only question before the committee is, are we accommodating the needs of the people we are supposed to be serving by sitting here as opposed to going to their geographic area, as Ms. Fish suggested, somewhere in the Windsor area or somewhere north? I have no particular hangup about it.

Ms. Gigantes: We can make accommodation for those people if we wish.

Mr. Chairman: Personally, my preference is not to travel. The only reason I am suggesting you may wish to travel is to accommodate groups that otherwise would not be able to come before us. That is entirely your decision.

Mr. Polsinelli: May I be allowed to pose a question?

Mr. Chairman: By all means.



Mr. Polsinelli: When will we know what groups are interested in making a presentation to this committee?

Mr. Chairman: We will probably start to get some indication of the groups interested in coming before us a week to 10 days after we put the ad in the newspaper.

Mr. Polsinelli: The closing date for indicating to the committee that a group wishes to make a presentation is March 6. Would it be perhaps more appropriate to determine at some point closer to March 6 whether there are groups from outside Toronto that may wish to make presentations, in which case we will go to them rather than have them come to us?

Mr. Charlton: If I can just add to that, perhaps at that point is when you consider whether in fact it is cheaper and more appropriate for the committee to travel or to bring the representatives of one group from another location into Toronto. In other words, if, all of a sudden, we have 10 groups from Thunder Bay that we think are legitimate, then perhaps the committee should travel, but if we have only one, then perhaps it is easier to fly the two representatives who are going to make the presentation down here to do the presentation here.

Mr. Chairman: May I suggest, though, that if I were part of a group proposing to make a submission to this committee and I lived on Superior Street in Thunder Bay, it would be distinctly different for me to decide to get in my car to drive to a committee hearing in Thunder Bay than to decide to fly to Toronto. I understand what you are saying. I am just suggesting you will not get a true representation. Having one person from Thunder Bay who indicates she will come all the way to Toronto to make a submission does not always reflect--

Mr. Charlton: No, I was not suggesting that; I was suggesting we assess those who actually show an interest by responding to the ads. We make our decision based on those who want to come, not based on somebody who has not indicated she wants to come.

Mr. Chairman: You are missing my point. They may indicate a lack of interest in coming before this committee strictly in terms of the distance they would have to travel. I cannot argue specifics because I do not know that is going to happen. The reverse is far more likely. If you set a day in Thunder Bay and you did not have adequate submissions for Thunder Bay, then you would cancel Thunder Bay, but let them know you are going there. I only use Thunder Bay as an example. At any rate, I think you should go in this order.

Mr. Poirier: If I was a member of a group wanting to make a presentation and I was from Thunder Bay, I would be influenced by whether I would have to travel to Toronto to make that presentation or do it in Thunder Bay. For example, some people might be very scared to take the plane. That is very simple. I know some people who would not take the plane to make the world's most important presentation. Yet, if we moved it to Thunder Bay, I know the economics of it. I know some would not take the plane to make that presentation. We must go to them, especially with the climatic conditions of winter. We should take the gamble, not them.

Mr. Ward: May I raise a point of order?

Mr. Chairman: Yes, by all means.

Mr. Ward: The member for Ottawa Centre (Ms. Gigantes) made a suggestion with regard to a schedule. It would be a lot simpler if we divided off the issues and agreed that we were going to have our hearings on February 23, March 2, the week of March 9, take a two-week break and then go into the bill clause by clause. Is it conceded that is agreed?

Mr. Chairman: I doubt that is a point of order, but it is a very good point.

Ms. Fish: I would agree to that schedule, recognizing, as I am saying that, that I already know of the conflicts with other committees, but I would be prepared to stick to that schedule.

Mr. Chairman: Knowing what Ms. Fish is talking about, which she has not elaborated on to any great extent, I want the committee members to know that by conceding on those dates she is making a considerable sacrifice.

So that we do not have to debate this all afternoon, if there is agreement, I want to thank you for making that concession. The earlier series of dates took into account some of the conflicts you had with the select committee on the environment. Ms. Gigantes has proposed the dates of February 23, March 2 and March 9. Then there would be a break. We would come back on March 30 and the final week would be April 6. If those dates are acceptable, I would like Ms. Gigantes to move that as a motion. Do we need a motion on this?

Ms. Gigantes: So moved.

Mr. Chairman: Let us do it formally. I have a motion by Ms. Gigantes. We do not need a seconder. All in favour of those dates?

Motion agreed to.

Mr. Chairman: Now we are in order, we can move to the next item.

Mr. Ward: What about the travel? Can we resolve that now?

Mr. Polsinelli: Let us do that the week of March 9, if there is sufficient interest.

Mr. Chairman: May I ask the clerk to comment on that. She has a much better feel for the situation as it is developing with respect to the applications that are coming in to hold hearings. Are there about 12 now?

Clerk of the Committee: I have about 12. I have not looked at the actual locations. My difficulty is, if you make a decision around March 9 that you feel you should travel and you are going to do that the week of March 30, I have a logistics problem as to whether or not I can arrange--

Mr. Polsinelli: We are not suggesting that any longer.

Clerk of the Committee: I thought that is what you just said, that you would make a decision on March 9. I am sorry.

Mr. Polsinelli: No, we are making the decision now to travel the week of March 9, provided there is sufficient interest expressed by the groups.

Clerk of the Committee: I can make hotel arrangements and meeting room arrangements and cancel them, but I cannot make them on short notice. I would rather cancel than try to scramble around at the last minute.



Mr. Polsinelli: Has the committee decided that it will be Ottawa, Windsor and Thunder Bay?

Mr. Chairman: No. That is what we should discuss now. If we are going to travel, where, and for how long? I agree entirely with your colleague's point. You do not get a true reflection of people's interest by coming in after the fact and saying, "They have not made a submission; therefore, they are not interested." They may not make a submission because of the distance factor.

Mr. Charlton: That depends on what you make clear in the advertising.

1640

Mr. Chairman: Maybe you can word it in such a way; I am not disagreeing with that.

Ms. Gigantes: We could easily take this bill around the province for the next two years and listen to people's comments on it if we wanted.

Mr. Chairman: That is not the intention and you know it.

Ms. Gigantes: The second point is this: People who have difficulty with flying out of Thunder Bay or environs, and who for that reason would decide not to make a submission to us--and for that reason only--can make a written submission to us. They can make a voice recording submission if they wish. We can receive submissions other than having presentations.

Mr. Chairman: I guess they could do a videotape too.

Ms. Gigantes: They may.

We may get into a situation where we are going to have to decide, simply on the basis of physical time available, whether we are going to have presentations from everyone, whether we are going to have presentations from the first people to fill up our sitting times, as we have now tried to arrange it, or whether we are going to ask some groups to try to consolidate presentations, particularly if they are coming from the same kinds of work situations, if they represent the same kinds of businesses and so on.

I think we will not be able to make that kind of judgement until we have some notion of how people respond to our ads and also who has already applied. It would be useful, even at this stage, to be able to get a list from the clerk of who has already made an application for a presentation time.

Mr. Chairman: In response to your first comment only, I think it is ridiculous, frankly, to suggest that we are planning to spend two years to delay this bill or whatever. We have five weeks set out. We have agreed on the time frame: We would report back to the House following the clause-by-clause in the week of April 6. Whether we travel or not, that time frame does not change, so let us not put up--

Mr. Charlton: Again, on that point, Mr. Chairman, I think you have to be clear on this, to be clear in terms of what Ms. Gigantes is saying to you. I sat on the committee that did the hearings on Bill 3 in January and February 1980, and I want to tell you that if you announce that you are going to travel and you do not make it clear you are travelling to hear limited presentations, you could be out on the road for two years once you have accepted those presentations.

If you are going to open it up wide, then you are going to have to be prepared to travel for more than a week. You cannot sit here and say, "We are going to travel for only a week but we are going to open it up to anybody who wants to make a presentation," because it is not going to work.

What this committee has to decide is, are we are going to do the job in three weeks of hearings and two weeks of clause-by-clause so that we can go back into the House with a completed bill this spring, or are we not?

If this committee is not prepared to make some pretty hard decisions based on those who indicate an interest in consolidating presentations and a whole range of other things--for example, after all that has gone on, we do not need to hear from every local trade union that represents women in the textile industry, or from every one of those textile companies, either--we are going to have to be fairly hard-nosed about those kinds of things if we are going to limit the hearings to three weeks.

Ms. Fish: May I address this point? I am very much of the view that we can handle this conundrum adequately both in the wording of the notice the clerk puts in the newspapers and in the agreement we have here in committee.

I want to take you back for a moment to the weeks. If we sit only four days a week, there are 12 full hearing days between February 23 and March 12. If we sit five days a week--if--for the weeks of February 23 and March 2, that gives us 10 full hearing days that could conceivably be devoted to Toronto in itself or those coming in.

Then, to provide in advance that we would travel to two or three key centres over the week of March 9 for hearings and to indicate within the ad that submissions would be heard on the basis of available time or whatever, but that all written submissions would be received, I think would be doable, very doable.

The more I think on it, the more I come to the feeling that there perhaps would be some merit in going to two or three locations that are far-flung. My sense is that we could put a hearing day in for each and do so within one week. I am very satisfied that the Canadian Organization of Small Business or the chambers of commerce will more than amply raise the necessary revenues and come en masse down here to Toronto.

I am satisfied that perhaps the Equal Pay Coalition--headquartered, as it is, here--will come before us. It does seem to me that there is some merit in providing an opportunity. I recognize it is limited, but we are limiting the total hearings wherever people are, whether it is in a centre other than Toronto or whether it is here. We are limiting the hearing times and then going into clause-by-clause.

I think it is doable, and the more I think on it, the more I think there would be merit in looking at travelling in one of those weeks. I am not particularly fussy about which week it is, but in one of those weeks we could somehow get to two or three corners of the province beyond Toronto and we could indicate so in the ad.

Mr. Chairman: I would like to get some input from Mr. Charlton on this because he may have some ideas that are better than what we have come up with here.



If I can read you the operative sentences--this is with respect to the "travelling if required" question--you indicated the ad could be written in such a way as to sort of tease them about the fact that we may be travelling and, if there were sufficient demand, we could travel if required. Having said that, the ad will say, with your agreement, "The committee will conduct public hearings in the Legislative Building, Queen's Park, Toronto, Ontario, and other locations, as required, commencing..." and whatever the date is.

Ms. Gigantes: Could we have copies of that?

Clerk of the Committee: You have on your agenda.

Mr. Charlton: The problem with that is that there is the danger of getting into what Ms. Fish was suggesting we cannot get into. That is, if you say to people out there, "The committee will travel as required" and you get 50 applications from Thunder Bay, 50 applications from Sault Ste. Marie, 50 applications from Ottawa, 50 applications from Sudbury, 50 applications from Windsor and 50 applications from London, then what does the word "required" mean? It has to be a little tighter than that.

Mr. Chairman: That is why I am throwing it out. I am not throwing it out because I love the wording we have here now. This wording can in fact be changed.

Mr. Ward: I suggest that in terms of the draft we take out "as required" because I think it will create the impression that these are totally open-ended hearings. We are going to have to be arbitrary; who are we kidding? We have agreed on three weeks in terms of the amount of hearing time. It is going to be a difficult task for the clerk and you, as chairman, to sort out who can and who cannot appear.

You could make that deletion to the ad by saying you will meet in other locations commencing on such and such a date and leave it at that. I do not think that is really an insurmountable problem. If indeed we have to travel, I suggest we travel that last week, try to hit two or three centres and be done with it.

Mr. Polsinelli: Why do we not just identify the centres and put them into the ad?

Clerk of the Committee: Because then if we do not have any response, you still have the commitment that you have to go.

Mr. Polsinelli: If we have no response, then there is nobody to listen to.

Mr. Chairman: We may have a limited response, but you could cancel those groups and tell them you have not had sufficient response; you could cancel it after the fact.

Mr. Polsinelli: It would be a lot easier doing it that way than leaving it open-ended or doing it any other way.

Mr. Chairman: I agree with you. I do not think that is what was being suggested by Mr. Charlton. Could you listen to the sage words of advice being placed by Mr. Polsinelli?

Mr. Polsinelli: My simple suggestion is that we identify the two or three locations to which we intend to travel in the ad.

Mr. Charlton: Assuming we decide that travelling is the appropriate thing to do, it should be very clear to everybody that it is limited. We have not decided we are going to travel yet.

Mr. Polsinelli: Okay.

Mr. Charlton: The wording we used there was that we would travel if necessary, and not that we would travel.

Ms. Gigantes: May I throw out the suggestion that instead of the wording "we may travel," we could suggest in the text of the ad that for the purpose of oral presentation, the committee may be willing to make travel arrangements? That does not say whether we are travelling or they are travelling.

1650

Mr. Polsinelli: Why can we not say, "Given sufficient response, the committee will also conduct hearings in Thunder Bay, Windsor and Ottawa"? Then if we do not have sufficient response, we cancel those locations.

Ms. Fish: I think that is not bad. It does a couple of things. It sets out what the locations would be if we were to go on the road, so we would not be into another round of where else we might go; it spreads it across the province; and it provides an opportunity for those who may want to make a presentation and who are within a fairly easy commute of those centres to indicate a response there if they prefer. We know we will have established a certain date or dates on which we will hold those hearings, just as we know we are limiting the hearing dates here as well.

Ms. Gigantes: Suppose we said, "Given sufficient response, the committee will consider travelling to..."?

Ms. Fish: Okay. I am easy on that, as long as we understand that we will be authorizing the clerk of the committee to do what she wants, which will be to make the necessary arrangements. Then, if there were insufficient response, we could cancel. Sure, I think that is doable. Ottawa, Windsor, Thunder Bay, in whatever order--

Mr. Poirier: How about the Sault?

Mr. Charlton: It is not the clerk we are concerned about here. She can go ahead and make any arrangements she wants and then cancel them; that is fine with us. It is just a question of what we want to do and how we want to do it.

Mr. Chairman: But in fairness to the clerk, I would like to have some indication of the direction in which the committee wants to go, so we do not put the clerk in a difficult position.

Mr. Charlton: I think Ms. Gigantes's wording covers that. If we say, "Given sufficient response, the committee will consider travelling to..." and name three locations, the clerk can go ahead, make her bookings and cancel them if we do not get the response. That is fine.



Mr. Chairman: All right.

Mr. Ward: I agree with all that, but in terms of the locations, I think we are all aware that for travel to northern Ontario it is a general practice to pick a location in the northwest and occasionally in the northeast. I think there is some sensitivity with regard to that.

Mr. Poirier: That is right.

Mr. Rowe: Why do not we go to Minaki Lodge?

Mr. Poirier: Excluding Minaki.

Ms. Fish: I want to be clear that we are doing it in one week and are moving from location to location in the one week.

Mr. Ward: That is fair.

Clerk of the Committee: It is very difficult for the four in one week. I have tried to set it up before, and it is.

Ms. Fish: I thought four was a bit sticky.

Ms. Gigantes: Yes. Three is pushing it, especially if we get a snowstorm.

Ms. Fish: I feel most strongly about Windsor and Thunder Bay. Others can discuss the merits of Ottawa versus Sudbury.

Mr. Chairman: That leaves only one week for Toronto.

Ms. Fish: No; it is two weeks in Toronto.

Mr. Poirier: If we are going to go that kind of distance in this kind of climate with these kinds of resources, may I suggest--throw this in the air--two places per week of travel, times two weeks?

Interjection: Combined with hearings in Toronto?

Mr. Poirier: That is right: Some of the other days in those weeks could be in Toronto.

Ms. Fish: I then want to know what is happening with the hearing days in Toronto, because I am of the view that the main hearings will be here, not on the road. Being on the road is a matter of courtesy. I am not satisfied that we can hit three locations in a week--in effect, Toronto for a full week of hearings plus two other locations. I do not think it is on.

Mr. Poirier: It is difficult; I agree.

Interjection.

Mr. Ward: We are not quite sure. Thunder Bay, Windsor and Ottawa in one week.

Mr. Charlton: Let us face reality here. We would be into a totally different ball game in terms of this discussion if so much work, travelling and consultation had not already been done. Then it would be a different game,

and we would be in a position to have to open it up, as we have with other pieces of legislation in the past.

Ms. Gigantes: Are we agreed? We have a consensus?

Mr. Charlton: We have been using it in the House for months.

Mr. Ward: One week of travel--

Ms. Gigantes: With three locations, and if it turns out that physically we cannot do three, I think Ottawa would be the place to sacrifice travel to, because it is certainly not as far from Ottawa to Toronto or as difficult to get from Ottawa to Toronto as it is to get from northern areas to Thunder Bay.

Mr. Chairman: Can we get agreement on that, just so we can get it recorded for the purposes of Hansard?

Ms. Gigantes: Could I comment on the text of the ad itself?

Mr. Chairman: Yes.

Ms. Gigantes: I would like to propose two deletions from the ad. The first would be to remove, in the first paragraph after "the private sector" in the third line, "The purpose of the legislation" down to "underpaid positions."

I will tell you why I would like to do that. I think people who are interested in commenting on this bill are alive to the issues involved in the bill and undoubtedly have already got themselves a copy of the bill; certainly lots of people I know have. I do not think it is part of our ad responsibilities to describe the nature of the bill, because any such description may be misleading in terms of what we are talking about. We ran into this problem back in Bill 105. I think we eliminate problems for ourselves the less we say about the content of what we are doing. We say, "This is the bill we are addressing," period.

The second deletion I would like to propose is in the second paragraph, first line. I would like to delete "written or oral" so that the sentence would read: "The committee invites submissions from individuals, groups or organizations wishing to comment on Bill 154. Written submissions must be deposited... Requests for an appointment...for oral presentations should be directed..."

Mr. Chairman: Those are really redundant words within the context of that paragraph. I do not have any problem with that.

Ms. Gigantes: And on the first paragraph?

Mr. Chairman: I do not have a problem with that either, particularly.

Is there agreement on the deletion suggested by Ms. Gigantes in paragraph 1, if you can follow it? Is there any disagreement with that deletion, which is the descriptive part of the paragraph following the comment on considering Bill 154 and then going through "An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector"? From that point on, starting "The purpose of" and then going all the way down to about the eighth or ninth line, would be deleted to "for the underpaid positions." Everything inbetween would be deleted.



Ms. Gigantes: And in the second paragraph I would take out of the first line "written or oral." We invite submissions.

Mr. Chairman: That is really just an editorial change, because the same thing is covered later in the paragraph.

Ms. Gigantes: Mr. Ward raises a point: Do we have wording from the clerk about the change that will be made in the "as required" in the last line of the first paragraph?

Mr. Ward: A straightforward deletion does it, does it not?

Clerk of the Committee: The second-last sentence would be, "The committee will conduct public hearings in the Legislative Building, Queen's Park, Toronto, Ontario commencing," and we will change that to February. Then, "Given sufficient response the committee will consider travel to Ottawa, Windsor and Thunder Bay."

Ms. Gigantes: Yes.

Clerk of the Committee: Because I was working from the other dates I had, I would change that date for when the written submissions should be deposited to Friday, March 6, not as a cutoff but as a suggestion that they have them in by that date.

Mr. Polsinelli: I have one slight suggestion. Perhaps the ad should read, "Given sufficient response, the committee will consider travel to the three locations on the week of..." That would tie it in a little further for the individuals who may be interested in making a response.

Clerk of the Committee: It was the week of March 9?

Mr. Polsinelli: Yes, the week of March 9.

Mr. Poirier: So you can slate your holidays.

Mr. Polsinelli: There may be an ice fishing expedition or something going on.

Mr. Chairman: Go pick oranges.

Mr. Poirier: In Thunder Bay? Frozen orange juice.

Mr. Chairman: Pick it in cans.

Ms. Gigantes: Northern fried chicken: It is southern fried chicken.

Interjections.

1700

Mr. Chairman: If that is the copy you are satisfied with, the next issue is to--

Ms. Gigantes: I have one other question on the copy. Will it be translated?

Clerk of the Committee: Yes. What we have been doing in most

committees, and working from that just as a suggestion, is that the ads have been placed in all Ontario dailies. There is one French daily, Le Droit, in Ottawa. The French copy has gone only in Le Droit. However, there have been committees that have put both the English and French copy in all dailies. It is your decision.

Ms. Gigantes: Let us do that.

Ms. Fish: Is there an opportunity to pick up some of the French-language weeklies?

Clerk of the Committee: Not in time. With the weeklies, you have even more difficulty getting a date.

Ms. Gigantes: Why do we not just have it translated? It is not going to cost a fortune.

Mr. Chairman: The broader question is, where do you want the ads placed? My suggestion to you would be the normal dailies and then if you add to those the French papers, the ones we discussed, the only issue then--

Ms. Gigantes: One French paper.

Mr. Chairman: One French paper plus--I was thinking in the plural sense of any weeklies you might want to suggest.

Ms. Gigantes: No, we cannot. There is no time to place ads in weeklies with the schedule we are working on.

Mr. Poirier: When were you planning to put the ads--

Clerk of the Committee: With the weeklies, the problem we run into is that the copy will go out to them at approximately the same time as it goes to the dailies. However, it usually means it will not run until yet a week later. You are looking at at least three weeks for the weeklies.

Ms. Gigantes: Let us put the translation in the paper, in the English-language press. It is good for them. It is good for business.

Ms. Fish: It does not make sense to me.

Ms. Gigantes: It is good for the francophones, good for the newspapers and is good for us.

Ms. Fish: If someone does not read English, is he going to pick up an English-language newspaper?

Ms. Gigantes: That is what they have to read in Toronto every day.

Clerk of the Committee: What about putting it in one, say The Globe and Mail or something such as that?

Mr. Poirier: Why should francophones not be able to read French in--

Ms. Gigantes: Because we are not going to be able to do it in time. They will get it too late. If you want them to have the notice when it is too late, do it that way.



Mr. Chairman: In my personal experience, which may or may not be of any value to any of you, I have found that the weeklies are relatively flexible in that they normally have less advertising. They normally have more space available and I have found it much easier to place an ad in a weekly, as long as you can give reasonable time as to when they print and so forth, than some of the dailies. I suggest that you at least give consideration to it. If the committee gives an okay and the timing does not work out, then we will not place the ads. However, if you give us the green light to go ahead and at least try--

Ms. Gigantes: Mr. Chairman, I will move that we follow your suggestion, and further that if the clerk discovers that we are not going to be able to get the word out to our francophone communities, we put a French translation in the English-language dailies.

Mr. Poirier: If you find that you cannot. My experience has been that if you bring it in one week, it will appear the next, in a francophone weekly.

Ms. Gigantes: You have a free hand.

Mr. Chairman: That is right.

Ms. Fish: I want to say that I think it is bizarre to put a French-language ad in an English-language paper.

Ms. Gigantes: Not in the least.

Ms. Fish: If people are not English-reading, why would they pick up an English-language paper?

Mr. Rowe: To see if our ad is in it.

Interjections.

Ms. Gigantes: This is a very important point. In the city of Ottawa, most Francophones do not regularly subscribe to Le Droit. They get the Ottawa Citizen. They will pick up Le Droit every few days, but they do read the ads. The city of Ottawa, which has a bilingual policy, places ads in English and French in the Ottawa Citizen. So do government agencies. Francophones, many of whom are perfectly bilingual, will pick up the paper and look at the ads. They read them with much more convenience and a greater sense of being served by their elected representatives when they can read them in French.

Mr. Poirier: The Globe and Mail does it all the time. The Citizen does it all the time. The Gazette in Montreal does it. We have seen it many times.

Ms. Gigantes: It is normal.

Mr. Chairman: What papers are you suggesting we print the French translation in as far as the dailies are concerned?

Interjection: All of them.

Mr. Poirier: One daily. Then there are something like 13 weeklies but you might want to select some of them.

Mr. Chairman: How many dailies do you have that we would be advertising in?

Clerk of the Committee: I have 49 dailies.

Mr. Chairman: Are you suggesting 49 ads?

Ms. Gigantes: Yes.

Mr. Chairman: I am just asking.

Ms. Gigantes: Do you know how much room it takes? It takes that much more room, and the bigger the ad you buy, the better the price you get per inch.

Mr. Chairman: Do you wish to discuss that further or is there agreement?

Interjections.

Mr. Chairman: That being the case, do you understand, madame clerk?

Clerk of the Committee: It is my understanding that Ms. Gigantes's proposal was that we go with the 49 papers in English and the one in French and the French weeklies, if I can get the same guaranteed date, and if not, then a bilingual copy in the 49 papers.

Ms. Gigantes: Right, and the one French paper, which is a daily.

Clerk of the Committee: Yes.

Mr. Chairman: Agreed? Agreed.

Mr. Poirier: Do you have a list of all the French-language weeklies?

Ms. Gigantes: Sure she does.

Mr. Chairman: The next issue I want to bring before you is the length of time for each individual hearing. My suggestion to the committee, which I know will meet with total unanimity, is that individuals, and by definition smaller groups, would have half an hour and well-organized larger groups would have one hour for their submissions. This would include their submission plus questions and answers from committee members.

If you agree to that, which you have not yet, I will ask for your co-operation and assistance from the standpoint of the chair to help keep to that timetable, because it is very difficult. You get wrapped up in questions and answers and you can go well over the time on some of these submissions, which throws the whole schedule completely out of whack, as you know.

Ms. Fish: Whatever time allocation we agree to, we can all agree to do our best to meet in the course of asking questions. However, I want to suggest that rather than setting up the times now, we look at what response we get to the ads on submissions and go from there. Among other things, there may be a wish to look at aggregating some of the submissions, as has commonly occurred in other committees. Depending on the numbers to be aggregated within a single submission, we may want to alter the time on it. I suggest we stand it down



and delegate that final decision to you, Mr. Chairman, perhaps with a representative from each party as a steering committee to decide that.

Clerk of the Committee: When I am getting my initial phone calls, may I suggest to them that they might initially look at half an hour and then, if there is any change, I will get back to them?

Mr. Poirier: Yes.

Ms. Gigantes: Do you mean all of them?

Clerk of the Committee: Yes, everyone who calls in. Then we would send it back to the subcommittee for any decision.

Ms. Gigantes: I am going to suggest a slight variation on that. We discovered during Bill 105 hearings that there were certain groups--let us face it, the Equal Pay Coalition has worked on this issue and this issue alone for 10 years. To suggest to them from the outset that they are going to have half an hour or even an hour is both impertinent and unrealistic. I think the things they will have to say about the bill will be at a depth such that we will want to spend more than an hour with them. The same may be true of certain business groups and also trade union groups.

For example, during Bill 105 hearings, I believe the Ontario Federation of Labour spent a whole morning with us. The Equal Pay Coalition certainly had more than an hour. They needed it and we needed it. We are going to throw ourselves into an impossible time mixup unless we realize from the beginning that these very large organizations--the clerk might be guided by how long these large organizations took when they came before us, because some of them took more than an hour.

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Mr. Chairman: There may be other groups such as the Equal Pay Coalition. Do you want to suggest at this point that it be half an hour, as I described it, and that an hour be left at the reasonable discretion of the clerk? If there are sticky problems that appear to require a political decision, please accept that I will bring them before a subcommittee to make the decision so we can deal with that. At this point, if you want to set aside two hours--just to use a figure--for the Equal Pay Coalition, that is fine with me, as long as we know that is what you want.

Ms. Gigantes: I cannot remember the groups that took longer than an hour for presentation before us on Bill 105; I can remember some of them but I am sure I cannot remember all of them. The clerk could take a look at the hearing process we went through then and draw up a short list of the groups that are likely to take more time with the committee and from which the committee may need more time.

Mr. Charlton: As an example--I think it flows out of what Ms. Fish was saying when we talked about this flexible approach--what if the committee gets requests for presentations from the Canadian Manufacturers' Association, Stelco, Dofasco, the three auto giants, all the tire companies and Inco? We are just not going to be in a position to hear them all and give them all an hour because we would be talking about 15 hours for those presentations.

We have to take the position that all those presentations will be aggregated under the Canadian Manufacturers' Association, except perhaps the

one that can make the exception, where it has something special to say as an industry. The Canadian Manufacturers' Association in trying to cover and represent its members, may need, as a group, two hours or two and a half hours. We have to make that decision based on what we get in the way of requests for presentations.

Mr. Chairman: I am prepared to work with that kind of problem. What I am saying is that in terms of the norm, because we have submissions coming to us now, we allow the clerk the flexibility to deal with them in the half-hour or one-hour time frame. Where we have difficult specific submissions that fall into the category you have described, we would bring that back to the subcommittee and indicate what we think makes sense and come back to you with a submission.

The clerk suggested to me by whispered comment a moment ago that you may get some groups come in and violently argue that half an hour or an hour is not sufficient. Where we cannot seem to fit them into a nice appropriate slot time-wise, then those political decisions--and they are political decisions--would be made by the subcommittee which would have to look at those people who have taken umbrage, if you will, with the decision that we have made. That will take care of the broad spectrum. We will have a few that will fall outside those parameters. Those are the ones that we will deal with in the way you suggested.

Ms. Gigantes: I am happy with your proposal as long as the clerk also bears in mind the pattern that was established in the Bill 105 hearings, because I think that provides us with some guidance as to what kinds of time allocations we are going to need.

Mr. Chairman: All right, we will try to do that to the extent possible, and we will try to satisfy the wishes of the individual groups and balance off the submissions in a fashion such as Mr. Charlton has suggested.

Do I have your agreement with half an hour for the smaller groups or the--I hate to use this phrase--less organized groups, and an hour for the larger groups with the more sophisticated presentations? For the still larger groups, by definition the Equal Pay Coalition, the Canadian Manufacturers' Association or groups that are representing a broad spectrum of society and have been involved in this issue perhaps for some lengthy period of time, we may have to make a decision as to the time they would require, which would probably be something in the order of two hours.

Ms. Gigantes: Can I also ask whether it might be possible for the clerk, when she receives submissions from one sector of an industry or one local of a union or whatever, to ask of the person making the contact whether there is an umbrella organization to which that group belongs that will also be seeking to make a submission? I think that will help us.

Mr. Chairman: That is a good point and we will do it. Consider it done, Ms. Gigantes. I am glad you raised the point. You have your arm still up in the air there.

Ms. Gigantes: No, I have it up again.

Mr. Chairman: Okay.

Ms. Gigantes: There is another matter I would like to raise. I do



not propose that we make any absolute determination on it now, but I would like to find some willingness on the part of committee members to consider it. It is the question of night hearings. We are dealing with a bill that affects women in the work place and businesses. We are dealing with people at work and it may be the case that some of the people who wish to appear before us cannot come during the day. Given the fact that we would prefer not to have to do extensive travelling, and I am expressing my strong opinion on that, perhaps we can offer to people who call that they make a submission at night, or in the evening--I do not mean midnight--if that were most convenient for them. It may in fact cut down on the pressure to travel. We may be able to get through the work in a way that is satisfactory to us and more convenient to other people.

Mr. Chairman: We will try to accommodate those groups in night sittings if necessary, but not necessarily night sittings.

Mr. Charlton: I think what Ms. Gigantes is asking for is agreement in principle that we will deal with night sittings if they are required.

Mr. Chairman: I thought I just said that. I have no objection to it, Ms. Gigantes.

Mr. Polsinelli: That is right.

Ms. Gigantes: I hear no other objections.

Mr. Chairman: I will not subject the committee to night sittings each and every night, but if we have to accommodate groups with night sittings I will come to you on bended knee, request your co-operation and your presence here for whatever period of time is required. We will try to accommodate those people who elected us to serve them in the most responsible way possible.

Ms. Gigantes: Responsive.

Mr. Chairman: And responsible; both. Have we dealt with that? Next question. Do you want to walk through the bill?

Interjections.

Mr. Chairman: I had yes and no.

Mr. Polsinelli: I recall quite vividly--I do not remember if it was 105 or the first-contract arbitration, but as a committee we went through the whole public hearing process. We debated the bill intensively, and then at a certain point the committee decided it would be a wise idea to have a walk through the bill. It may be an idea to do that when it should be done, before we commence the public hearing process, so each and every member of this committee is familiar with the contents of the bill. The parliamentary assistant may not approve of my suggestion, but--

Mr. Chairman: He may be doing the walk through.

Mr. Ward: I think he would be quite happy to make arrangements for a walk through.

Mr. Chairman: Let us deal with this quickly. I do not want to spend a lot of time on it.

Ms. Fish: The answer is no walk through and the parliamentary assistant has indicated he is prepared to provide a walk through for any members so wishing.

Mr. Polsinelli: That is right.

Mr. Chairman: Okay, that will be outside of this committee's formal sittings. Can we agree on that, Mr. Polsinelli?

Mr. Ward: As long as they notify me when they want the walk through.

Mr. Polsinelli: I have no problems with that. I just do not want to hear three weeks down the line that we want a walk through of the bill.

Mr. Chairman: All right.

Ms. Fish: Do not say it then.

Mr. Chairman: You have all been warned by Mr. Polsinelli in advance.

Ms. Gigantes: This is a new point in time.

Mr. Chairman: Next point I have, do you wish Catherine from research to prepare a weekly summary for all of you?

Ms. Fish: Yes.

Ms. Gigantes: That would be most helpful.

Mr. Ward: Shall we ask Catherine first?

Ms. Evans: I am prepared to do that. It would help me out.

Mr. Chairman: We have served notice to research that we want a weekly summary. Is there anything further to bring before this committee? You have been magnificent. I thank you for your co-operation and we are adjourned.

The committee adjourned at 5:18 p.m.





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Lacking J49-50 (Feb. 1987).





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

MONDAY, FEBRUARY 23, 1987

Morning Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Ferraro, R. E. (Wellington South L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Ontario Federation of Labour:

Wilson, G. F., President

Griffin, J., Executive Vice-President

O'Flynn, S., Secretary-Treasurer

From the Business and Professional Women's Clubs of Ontario:

Neville, E., President

McDonald, K.

Bolduck, T.

Lohnes, C.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, February 23, 1987

The committee met at 10:05 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, we have a representative from each of the parties here. I recognize a quorum. There are other members still to arrive but I think we should get under way because we do have a rather tight schedule for this morning and the balance of the hearings this afternoon.

One small order of business: I would like one member of each party to be in attendance following the last hearing this afternoon for a quick update on scheduling and some logistical problems we would like to discuss with the committee members. I do not want to take up the time of all of the committee at this point with respect to that small problem.

Mr. Dean: Before we get further under way, I would like to raise a point of order. I note among the information we have been given this morning there is a joint statement by the Canadian Federation of Independent Business, the Canadian Manufacturers' Association, the Council of Ontario Construction Associations and the Chamber of Commerce in which it is stated that there are some government studies available which bear on the subject we are discussing. It would seem to me it would be very helpful for all members if those statements were made public as quickly as possible, preferably today.

Is a motion in order to request them?

Mr. Chairman: Certainly a motion is in order at any time from a member of the committee. Perhaps Mr. Ward would like to respond. I should introduce Mr. Ward as the parliamentary assistant to the Attorney General (Mr. Scott) and he will be here helping guide us with this bill. Mr. Ward, do you have any comment to make? I am not familiar with the studies Mr. Dean is speaking of. Can you perhaps elaborate in any way on those studies?

Mr. Ward: Any studies that have been undertaken through the Ontario women's directorate involving material and consultation that may have been held with private sector establishments in preparation for the development of this legislation, I do not believe would normally be available, even under the proposed freedom of information legislation. That work was done with the co-operation of those businesses and in confidence and I doubt very much that we would be in a position to be able to release that.

Mr. Dean: I think we should make the request in any case, because I think it would be very important if the government already has information that all of the members of the committee have as much as possible to deal with this important subject. Moreover, I understand that three of the studies I am speaking about were not dealt with by the Ministry of the Attorney General in the first place, but rather the Ministry of Industry, Trade and Technology.

Mr. Chairman: Mr. Dean moves that we request the government, from whatever ministries these are available, to release to the committee members as soon as possible any relevant studies on the issue of pay equity.

We have a motion from Mr. Dean with respect to a series of studies which I gather he has identified in the Ministry of the Attorney General and in the Ministry of Industry, Trade and Technology with respect to Bill 154. Any further comment?

I will call the motion on that matter. All in favour of a request for those studies being provided to the members of the committee? Opposed?

Motion agreed to.

Mr. Chairman: Mr. Ward, will you carry that request through to the appropriate parties?

Mr. Ward: I would be happy to.

Mr. Chairman: We will see what the response will be at that time.

It is partly the chairman's fault that we are starting a little late. However, I want you to know I was here a couple of minutes early. I have witnesses to that effect. I would like to ask the members of the committee to keep the meetings on time to the extent it is possible.

#### ONTARIO FEDERATION OF LABOUR

Mr. Chairman: We do have a major group before us this morning, the Ontario Federation of Labour. I would like to introduce and welcome Gordon Wilson, the president, Julie Griffin who is the executive vice-president and a gentleman who I think is well known to most of us in that he has frequented these chambers on other occasions, Sean O'Flynn who is the secretary-treasurer. We welcome all of you to our meeting this morning and we look forward to your presentation.

Mr. Wilson: We are pleased the Ontario Federation of Labour is to have an opportunity to appear before the committee this morning to present our views on this very important matter. Our purpose in being here this morning is obviously one of supporting the legislation and further to suggest to the committee a number of improvements which we believe will improve the application of the legislation and make it, in our view, more workable and certainly, we believe, strengthen the factor of equitability as it applies to women.

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Unlike other presentations that you may hear during these hearings from organizations such as the Canadian Federation of Independent Business or the National Citizens' Coalition or the Ontario Chamber of Commerce, we in the labour movement believe that pay equity can work and pay equity should be made to work in Ontario. It has been long overdue and we believe it will redress a historical inequity that must be met not only by this committee but by the Legislature itself.

We hope you will receive our amendments today and should note that they have already been proposed through the Premier's labour advisory committee as a model for pay equity legislation. We ask the committee to take note that the



presentation the federation is making this morning probably has undergone the most extensive consultation or process in the history of the Ontario Federation of Labour or in the labour movement in this province.

We have seriously considered the matter before us. On that basis, we would like to begin to make our presentation to the committee.

The Ontario Federation of Labour represents 800,000 working men and women and their families in the province. Approximately 300,000 are women. We appreciate the opportunity to once again present our views on pay equity to this committee.

Before we enter into a detailed discussion of the specific provisions of the pay equity bill before you, Bill 154, it seems worth while to recapitulate the ground on which we take the position that the time for fair legislation is long overdue. The basic question of the underlying demand for justice which provides the ground for these discussions is well known to the members of this committee.

Women in this society continue to subsidize the economy and their employers through substandard wages. In this regard, the data speak for themselves, since women continue to earn less than two thirds of the wages of men. The work which women perform in our economy has been traditionally undervalued. Even occupations dominated by women tend to offer higher salaries to the few men active in them.

Over the last decade, as the popular demand for pay equity legislation has increased, the Ontario Federation of Labour and large numbers of other groups have travelled the province to seek the opinions of individuals and organizations. In extensive rounds of submissions to public bodies, in forums, in educational sessions and a vast range of meetings we sought the opinions of the people of this province and the message was almost universally the same.

Women in Ontario have a clear view of the absolute need for action on the pay equity front. They have also told us, and members of this Legislature, that the time for halfhearted and inadequate measures is past. The objective is to achieve equity and to do so over a short period of time.

Working women all over Ontario in virtually all occupations were given the hope that this new government would finally enact a law which is fair and which works. Promises made during the 1985 Ontario election and the terms of the New Democratic Party-Liberal accord which has kept this government in power held out the hope that government would finally respond to the very strong public demand for equity and justice.

It has now been nearly two years since the establishment of the government. Yet, we are still engaged in what seems to many an unending process of discussion and investigation. As this process drags on, none of us should be surprised at the growing sense of frustration and cynicism among many women and their organizations across Ontario. Every further period of delay simply compounds the injustice of the current situation, and every year more women retire, unable to benefit from potential efforts to right the balance and also unable to benefit from the improvements in pension rights which might have come from the successful passage of this legislation.

While we recognize that the legislation now before you is a broader attempt at legislating pay equity than has been attempted anywhere in North America, we still see serious flaws in the proposed law. In addition, it is to



be reasonably expected by the people of this province that Ontario should lead the way in preparing progressive legislation and in preparing the ground on which people can live decent and prosperous lives.

We live in the wealthiest part of Canada and we have long had a tradition here of moving forward and demonstrating to people elsewhere the potential of government action in the improvement of people's lives. Women in Ontario expect to see leadership on the part of this government. Some extensive changes in the proposed legislation can deliver on the promises of the last election and the general promise of a good life in Ontario.

The Ontario Federation of Labour is an active member of the Equal Pay Coalition. We strongly support the process of consensus-building which the coalition undertook and we support the detailed analysis and recommendations which the coalition will bring to this committee. Among other things, that presentation reinforces our long-standing position that all workers in Ontario would be covered by a single piece of legislation on pay equity.

We have made clear our support for one equal pay law for all, as is the case in minimum wage, human rights and health and safety legislation. In the context of a debate about justice and equity, it makes no sense at all to segregate people into groups. To do so, as the legislation proposes, is to tell people who happen to work for one kind of employer that they somehow have a greater or lesser right to equity and justice than those who work for someone else. The point of establishing rights for people is to make them available and to make them real for all people regardless of where they happen to have found employment.

The failure to include smaller businesses, for example, further victimizes those who are already severely disadvantaged. Most women who work for smaller businesses have no access to the protection and negotiating power which unionization brings with it. Many are immigrant women and women of colour who are victims of discrimination at a number of levels which go beyond the question of pay equity. The failure to cover such employees deepens and broadens the injustices under which they already work. It limits their rights, when in many ways their rights should be more dramatically expanded.

I am at this point going to ask Julie Griffin, the executive vice-president, to be more specific on the amendments we are proposing to this committee.

Ms. Griffin: Our amendments can be characterized as having four parts: coverage, timing, funding and the role of unions. I will dealing with them in that order.

Our initial recommendation for amendment therefore deals with the question of coverage. Both Bills 154 and 105 must be amended to make it clear that the stated objective of the legislation is to achieve equal pay for work of equal value. Accordingly, we would like to see the preamble of the bill amended to more accurately reflect the intent of the law. The wording should be as follows, "Whereas it is desirable that affirmative action be taken to close the wage gap between male and female workers in Ontario...."

The point of changing the preamble is obvious to us. It will make an explicit statement about the intent of the law and the nature of the project that we are engaged in. In making this change, we put the emphasis on the notion of affirmative action and point our society in a direction which sees a mandate for action rather than a more permissive mode or, in other words, a proactive approach rather than a voluntary approach.

The powers advocated in the next recommendation for the Pay Equity Commission are essential if we are to avoid further widening of the wage gap for women in those firms and industries which employ largely women.

Our second recommendation is that the legislation give specific powers to the Pay Equity Commission to ensure that women in all-female work places who have no male comparison groups would receive wage adjustments on the same timetable as other workers who are not under this comparison constraint. The same principle must also apply among establishments where there are too few male comparable job classes to allow for comparisons which redress the wage rates of all the female-dominated jobs in the firm.

In fact, without this kind of amendment, workers who work in all-female work places such as child care centres, libraries, nursing homes and social service agencies will continue to have the socially important work they do seriously undervalued and underpaid. Surely any pay equity legislation must address this inequity.

The elimination of exemptions is critical if we are to avoid situations in which employers and individuals will seek to avoid the effect of pay equity legislation by placing large numbers of positions into exempt categories. Such efforts would significantly undermine the principles of universal rights, equity and justice on which this whole process must be made.

Our next recommendation, therefore, is that Bill 154 should be amended to eliminate exemptions and exceptions from equal pay provisions such as casual employees, the existence of merit pay systems, red-circling of jobs and arguments about particular skills shortages.

To entrench in legislation methods that employers have historically used to undervalue women's work is unacceptable to the Ontario Federation of Labour. We believe that all women workers must be included in this legislation. Casuals are nothing less than part-time workers who work regular jobs at irregular hours and they have the right to be paid fairly. It would be indeed tragic after pay equity is a reality, if casuals, who are predominantly women, suffered economic loss by being excluded from this legislation.

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Similarly, merit pay systems are one of the most common methods employers use to underpay women. Throughout the hearings on the green paper and on Bill 105, working women told this government there would be no reason to justify this kind of exception.

As well, red-circling of jobs must not be allowed under Bill 154. At the federation we are already hearing reports of employers who are freezing men's wages as a method of funding pay equity. We believe the problem in the work place is not the overevaluation of men's work but the underevaluation of women's work. It is the employers who have profited from this state of affairs, not their male workers, and they must not be permitted to correct historical inequities by emptying the pockets of male workers.

We believe it would be totally unjust if the moneys which otherwise would have gone to improve the standard of living of the workers were redirected to achieve pay equity. This major loophole must not remain in the proposed legislation.

Arguments that skill shortages should be exceptions to Bill 154 are also



indefensible. One has only to consider the shortage of nurses in this province. Hospitals are recruiting nurses from other provinces and the USA and not, in fact, raising nurses' wages.

It is our view and the view of the majority of presenters to the green paper hearings that the only allowable exception should be seniority, and this should be permitted only as long as it was shown there was no gender bias in its application.

The process of expanding the coverage of Bill 154 to recognize the principle of equal rights must seek to make specific arrangements for different groups of workers. Presently, employers with fewer than 10 workers would be excluded altogether from the bill. We have not been convinced that some workers in some jobs should be denied the right to equal pay. The government's own green paper on pay equity reported that 30 per cent of Ontario working women are in work places of fewer than 20 employees. Most are not unionized and have few, if any, wage protections and job security. Without laws, this group is the most exploited in terms of remuneration.

This is a quote from Evelyn Myrie of the Immigrant Women's Information Centre:

"In nonunionized establishments you will find a disproportionate number of immigrant women and visible minority women, who by the very nature of their origins and racial background are faced with...low wages and...often racial discrimination. Since many of these women are employed in small business environments, it is necessary that the small business employer not be exempted from implementing pay equity legislation."

No organization exists in those work places through which women could lay a complaint and advance their cause. As such, the Pay Equity Commission will be the appropriate forum for them to use. Without the right to direct access, even an expanded law would have little meaning for women working in such a situation.

Therefore, as an absolute minimum, the bill should be amended as follows:

Workers in unorganized work places which employ up to 99 people must be guaranteed access to a complaint-based system.

Work places with 100 or more employees should be covered by law so as to require employers to engage in proactive behaviour with respect to pay equity where there is no union.

In all cases, no matter what size of a work place, where there is a union, where the work place is organized, it must be mandatory for pay equity plans to be negotiated between the union and the employer. They already have to negotiate on other issues. There is no reason to exclude them on this one.

The point of our recommendation is to recognize that differing situations will demand approaches and solutions which recognize the differences in power among various groups of workers. The objective of equality for all can be achieved only through the establishment of procedures which take into account the diversity in the kinds of work places staffed by women.

Our next recommendation provides for a test of success in the pay equity process in the sense that it requires employers to show that the disparity in wages, which was the result of past wage discrimination, has been eliminated.



Accordingly, we would recommend an amendment of subsection 5(1) of Bill 154 as follows:

"For the purposes of this act, pay equity is achieved when the wage differential between female and male job classes is reduced by an amount attributable to systemic wage discrimination."

Such a test appears to us to be essential on the road to achieving equity as envisioned under the International Labour Organization's standard for equal value.

With regard to timing, the federation also has specific concerns about the timing proposed in the legislation before the committee. The time lines are simply too long in the face of all of the overwhelming evidence of past discrimination and in the face of very real costs which will be faced by older women workers for the rest of their lives. A number of presentations on the need for firm time limits on implementation were reflected in briefs to the green paper hearings.

Then we go into a quote from a group of hospital workers who are covered by the Hospital Labour Disputes Arbitration Act and are all too familiar with issues, getting caught up in a system that does not provide for firm time lines and how they have to wait for a long time before they receive pay increases.

Accordingly, we are recommending amendments that would provide for pay equity wage adjustments to begin no later than two years from the effective date of the legislation. Further, the law should provide for faster payouts for key target groups such as women close to retirement and women of particularly low income. The law should provide for the completion of all pay equity adjustments within five years of the effective date of the legislation for both the public sector and the extended public and private sectors. Finally, all pay equity wage adjustments must be made retroactive to the effective date of the legislation.

We think our demand that the pay equity adjustments be made in a timely fashion and be retroactive to the effective date of the legislation is essential. This will ensure that employers will not prolong the process unnecessarily and it will have the effect of shortening the time period during which this province achieves a measure of equity.

In the section on funding, we deal with the question of costs. It is abundantly clear that pay equity cannot be readily achieved in the broader public sector unless this government recognizes the need for specific increases in transfer payments to pay for the cost of pay equity adjustments in this sector. Therefore, we recommend that there must be increased transfer payments to the broader public sector that will cover not only the cost of wage adjustments but also any related administrative costs associated with the implementation of pay equity plans in broader public sector work places.

We cannot emphasize this point enough. Without increases in transfer payments, pay equity legislation will not work in the broader public sector.

The years of public sector restraint policies have left many of the institutions that make up the broader public sector under severely constrained financial circumstances.

We believe it is important to ensure that schools, municipalities and health care institutions are not trading off the health and welfare of the

sick or our youth in order to achieve pay equity. We believe these payments could be incorporated or should be incorporated into the more progressive income tax base at the provincial level and directed to the implementation of this law. In our minds, it is absolutely essential and clear that specific transfers will have to be made. These transfer payments must clearly be in addition to and separate from regular transfer payments.

We believe there will be a tendency in many work places to seek to divert funds, which might have gone to wage increases for all employees, into the pay equity area. If this law is to gain the support of the majority of working people in the province, it must be clear that the costs associated with it will not be paid directly by those who have not suffered wage discrimination since they were not the beneficiaries of the discrimination in the first place.

In other words, what we are saying is that male workers in the work place should not have to bear the cost of implementing pay equity adjustment since it was the employers and not the male workers who were the beneficiaries of the discrimination.

As a consequence, the legislation must be amended to ensure that separate funds are established to ensure pay equity payments are not simply a transfer of funds from general wage increases. The legislation must prohibit employers from reducing or restraining compensation payable to any employee or from reducing or restraining compensation in order to achieve equal pay for work of equal value. We believe extensive amendments are needed to clarify and tighten the methods used for wage comparisons.

Wage comparisons in work places with many classifications and rates of pay within classifications can obviously be made either to improve the position of women or to maintain discrimination. As such, the law must require comparisons that set a woman's wage against that of the highest comparable rate within a job classification rather than the lowest. To do anything other than that would simply work to maintain discrimination.

We get into the role of the unions. The federation has particular concerns about the role of the unions in the process of negotiating pay equity provisions. As the democratically chosen representatives of working people, unions already are extensively involved in negotiations with employers. The need to provide for pay equity and to negotiate fair plans for adjustment requires an expansion of the traditional parameters.

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Rooting out discrimination will require a greater opening of the books than is usually the case in negotiations and it requires a much more open atmosphere in which the creation of a plan to end wage discrimination can be discussed. Therefore, we believe that pay equity legislation must provide that unions and individual complainants be given access to all information necessary in dealing with the consequences of the pay equity law.

For example, it is critical that the question of negotiations for pay equity be carried out independently of the regular rounds of negotiation for compensation, benefits and working conditions if either party requests it. We are proposing that the law would provide for a rule that spells out that bargaining for pay equity plans take place separately and apart from regular collective bargaining if either party requests, so that the pay equity issues do not become a bargaining chip.



It is not a new issue for the bargaining table. We believe either unions or employers must have the right to request that these discussions take place independently. We do not believe we have to sell people's standard of living in order to resolve social injustice.

In order to ensure that traditional parameters do not interfere on the road to equity, we strongly recommend the deletion of the section that provides for exceptions to the equity process on the basis of the historical bargaining strength of male-dominated groups of employees. Leaving room for such an exception simply allows the process to avoid addressing the fundamental issue of wage discrimination and its elimination through the pay equity law.

In the private sector of this province, plant workers, predominantly men, are organized in greater numbers than office workers, who are predominantly women. This federation goes on record as strongly opposed to this major weakness in the legislation which would be used by employers to quickly erode any gains achieved by women under the legislation.

I want to divert from the text for a moment on this. We did a survey of all the major affiliates of the federation on that particular point. We talked to the steelworkers, the auto workers, the Canadian Union of Public Employees, the Ontario Public Service Employees Union, the rubber workers, you name it. We covered the public sector and the private sector extensively on this process, on the question of whether the historical bargaining strength of male groups should be an allowable exception. Without exception, the answer was no, the labour movement does not want this included in the legislation. Mr. Scott has told us he was putting it in there to protect unions. We are saying: "Thank you very much, but we will take care of ourselves. We do not want it in there."

The Ontario unions have an immense fund of experience at bargaining with employers concerning the question of classification and the appropriate compensation for classification. The legislation should recognize the depth of this experience and allow unions the right to seek to negotiate means other than job evaluation for determining appropriate comparison groups. While job evaluation may prove to be the most common method used, there is a host of other potential alternatives that may prove to be more fair in particular situations. Therefore, we strongly recommend that the proposed legislation be amended to allow unions the right to negotiate methods other than job evaluation for achieving pay equity.

These methods could include such alternatives as integrating pay lines between predominantly male and female classifications. With this approach, the parties would determine the base, the midpoint and high-end wage rates for predominantly male and female classifications. A formula for adjustment would be negotiated between the parties and would raise the wage rates for the female classifications to the three male comparison rates. Another approach could be equalization of base pay and entry level pay rates for clerical and plant positions or clerical and caretaker positions.

A final area of concern in this section revolves around the duty of unions to bargain in good faith. We recommend that the section of the legislations which sets out the terms of liability against unions be changed to conform with existing labour legislation that mandates unions to bargain in good faith and to represent workers fairly.

Further, Bill 154 should be amended in order to provide the union with protection against complaints concerning a negotiated pay equity plan where



that plan has been ratified and approved by the membership of the union. At the same time, individual complainants would retain their right to complain if they feel they have not been represented fairly.

The effect of these amendments would be to ensure that the union has the right to negotiate a pay equity settlement and to implement that settlement once the membership of the union has approved of the plan. Individuals who feel that the negotiated plan has not represented them fairly would have the right to challenge the union if they see a failure to represent them fairly. The effect of such an amendment would be to provide protection both for the union and for the individual. The individual should be granted rights similar to those now contained in the duty of fair representation sections of the existing Ontario Labour Relations Act.

Two further amendments strike us as necessary in Bill 105; that is, the bill must provide explicitly for the duty to bargain in good faith for both parties and protection from reprisals for those making complaints under the legislation. The purpose of these suggestions is clear. Individuals exercising their rights under the law must be protected. Experience with existing labour relations law has shown us that this clause needs to put the onus on the employer to establish that a dismissal or a change in working conditions is not a reprisal due to efforts to enforce the law. This will help to ensure that there are no reprisals due to efforts by individuals or a group seeking pay equity. As well, we believe the whole process will merely be a sham if either party to a set of negotiations for a pay equity plan fails to bargain in good faith.

Mr. Wilson: We would ask Sean O'Flynn, secretary-treasurer of the federation, to draw our conclusion in the brief.

Mr. O'Flynn: We believe the changes proposed in the brief will have the effect of producing pay equity legislation which will serve this province and its people well. Over a defined period of time, it will eliminate the wage disparities between men and women that have been shown to be a direct result of discrimination. Its effect will be to achieve equity and justice.

We in Ontario are at a crossroads. Bill 154 should be a blueprint to lay the groundwork for economic justice for Ontario working women. The proposed legislation requires substantial amendments to make it a truly effective tool to achieve equal pay for work of equal value. Bill 154 must not build in large loopholes that would exclude thousands of women. We must not have a bill that creates "have" and "have-not" women workers. This legislation must build in protection to ensure women, and their unions, have the right to negotiate strong pay equity programs.

The best concluding remarks are those of Times Change Employment Centre to the green paper hearings:

"There is a very simple way to test how valuable the work of women is. Imagine away all those 2.1 million Ontario women in the labour force. Imagine an ordinary day. You go to drop your child off at the day care centre, but it is closed because day care workers are not there and you take your child with you to the office. When you get there, the phone is ringing because the receptionist is not there. You draft a letter, but there is no one to type it. You want to call a meeting, but there is no answer when you call the offices of those with whom you want to meet. In frustration, you head out for lunch, but the restaurants are closed because there are no waitresses....

"In actual fact, you cannot wish away 2.1 million women in the Ontario labour force. The work these women do is valuable, essential and necessary to the economy. It is often skilled work. It is usually demanding work, and it is seriously underpaid...it is time for the government of Ontario to keep its promise and ensure that women are paid equal value for the important work they do."

We call on this committee to move as quickly as possible to amend both Bill 154 and, similarly, where necessary, Bill 105, to reflect the needs of women in this province. These bills will set the standard for other jurisdictions. Let us make them something we can all be proud of.

Mr. Chairman: I would like to thank the federation for its presentation to the committee this morning. I have some members who have indicated they wish to raise questions. Mr. Ferraro, you are first.

Mr. Ferraro: First, a general question to the delegation. I thank them for the brief, but in essence much of what they say, and obviously from labour's standpoint, indicates that while the government is moving, the legislation is not broad enough or quick enough and there are not enough safeguards in there.

Can you tell me how you would comment to the adversarial approach that says because it is such a monumental bit of legislation and because of the apprehension, which I think in some cases is justifiable, particularly among small businesses and especially those with under 10 or 20 employees, that it could be regressive to women and the hiring of women in the work place? Not only that, but from the standpoint of the business person it is much more difficult perhaps, and I think logically so, to adapt if you have three or four employees than if you are a large corporation. Subsequently, it affects their viability, which is somewhat tenuous to begin with. Is there no legitimate offsetting argument in that regard?

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Ms. Griffin: There are several questions in your comment, but the first one about whether it would be adversely harmful to women, the experience in other jurisdictions where they have implemented legislation similar to what we are looking at here has been quite the contrary. There are no statistics or evidence to support that. That is the first question.

Mr. Ferraro: Excuse me. Then the allegation or the assertion that if you are in particular a small business person, let us say somebody with under 10 employees--

Ms. Griffin: I was coming to the small business.

Mr. Ferraro: I am sorry. I thought you were alluding to that in your response.

Ms. Griffin: No. You had several points and the first one was about whether this would be harmful to women.

The second point, about small business, is that we think it will probably be easier for small businesses to implement this because they will have fewer classifications and a smaller adjustment to make, if you like, in terms of the legislation. Where it will be difficult will be in the larger corporations where they have hundreds of classifications and are going to have

to go into a much more comprehensive kind of approach to implementation. In small firms they may be able to do it in a much shorter time frame and in a much simpler fashion; the evidence of the discrimination will be clearer and the ability to deal with it will be easier.

Mr. Ferraro: We have roughly 120,000 small businesses starting up this year. Do you think it would be regressive for a small business person--let us assume it is a man, which the majority of them are right now starting up small businesses--if you made it mandatory, that he is going to say, "I am not going to hire a woman; I am going to hire a man"? You do not think it would hurt women's chances for employment?

Ms. Griffin: No, actually I do not. There are only so many people available to do so many jobs. With the wages he is paying now, he probably would not be able to hire a man. That is why women are in these jobs: men will not work for those wages.

Mr. Ferraro: Okay. I believe on page 14 of your brief you indicate that you are concerned about other forms of compensation being negated to some degree in order to compensate for the cost of implementation of pay equity, which I think is a viable concern. Particularly in C4 you indicate you want legislation "to prohibit employers from reducing or restraining compensation payable to any employee or from reducing a restraining compensation in order to achieve equal pay for work of equal value."

I am trying to envisage how the government could pass legislation or in what form that would indicate something that really has not been bargained for, whether from a collective bargaining standpoint or from a discussion between management and staff who are not unionized. How do you legislate that?

Ms. Griffin: You look at historical patterns and how wage increases have been granted in the past. There are ways of measuring how employees in a work place have been compensated in the past that would indicate whether there was an attempt to subvert the legislation by not granting a wage increase at this point in time.

Mr. Ferraro: What if the person had an extremely bad year? What if interest rates went back up and he had a lousy sales forecast? Do you take that into consideration?

Ms. Griffin: As long as it was not being done in order to offset the legislation, then it would have to be taken into consideration.

Mr. Ferraro: What form of legislation do you put those in to guarantee that? What is your suggestion? I am just curious.

Ms. Griffin: You spell out that it is illegal to reduce or restrain compensation in order to achieve equal pay for work of equal value.

Mr. Ferraro: Without a good reason?

Mr. Wilson: What are the good reasons? What you are suggesting is part of the economic argument.

Mr. Ferraro: This is a guy who is almost broke. Yes.

Mr. Wilson: The point is that we are trying to address an inequity that has been in existence since the day the Bible was a four-page flyer.



Mr. Ferraro: I agree.

Mr. Wilson: It is about time we did something on that.

Mr. Ferraro: And we are.

Mr. Wilson: You do not do that by reducing everyone to the lower denominator.

Mr. Ferraro: No, I am not saying that. All I am saying is, how do you legislate what you are telling me should be in there? I am not sure how you do that.

Mr. Wilson: On the basis of equity. That is what we are saying. The compensation for a person who is doing a job should not be indicated by which gender he or she is. That has been the historical application we work with.

Mr. Ferraro: That is not the argument. You are saying that in order to implement pay equity, we should legislate employers in some form, which I am nebulous on, to make sure--

Mr. Wilson: To pay the work they have already recognized for a job which is presently occupied by a man.

Mr. Ferraro: Right.

Mr. Wilson: You agree.

Mr. Ferraro: I do not have any problem with that whatsoever, but what do you do in a scenario where, first, you have not negotiated future contracts and, second, part of that negotiation, to some degree, has a bearing on how that company is performing? If you cannot afford to do it, the converse is going to be what happened with Chrysler. You lay people off. Is that any better?

Mr. Wilson: What happened with Chrysler was they had a remarkable turnaround.

Mr. Ferraro: With labour's co-operation, I might add.

Mr. Wilson: That is exactly right.

Mr. Ferraro: The point is, how do you legislate it?

Mr. Wilson: I am certainly not suggesting this morning that unions bargain outside of the ability of the corporation to pay.

Mr. Ferraro: I am not talking just about unions.

Mr. Wilson: Then what the heck are you talking about? All we have talked about is how many angels can dance on the head of a pin.

Mr. Chairman: I wonder if we can restrain the debate and keep it on the line of questioning. Unless you have a quick supplementary, I have to move on. I am going to try to allocate times as equitably as I possibly can. Since this is a bill about equity--

Mr. Wilson: We get supplementary answers.

Mr. Chairman: --I am going to try as chairman to make sure everyone gets an opportunity to raise questions. Do you have a final?

Mr. Ferraro: No. That is fine. I will let it go there.

Mr. Chairman: I am pleased. We can move on then.

Mr. Ferraro: I understand the predicament you are in.

Ms. Gigantes: I will try to be brief and we will have an amendment that will meet Mr. Ferraro's needs, I think.

Can you tell us how many of the women who are members of unions and are affiliated with the OFL work in the private sector? Do you have figures on that? If you do not have them at the top of your head--

Mr. Wilson: Not exact figures, no.

Ms. Gigantes: --I wonder if you can give us your best estimate at some time in the future, because it is often difficult for us to figure out the implications of particular mechanisms within the bill when we do not know how many women, for example, in the private sector, will be organized. I suspect we are talking about a very small group.

I am interested in your description of the proactive approach as one which is opposite to the voluntary approach. I had not thought of it quite that way, but essentially what you are saying is if you have to rely on a complaints mechanism, you are relying first on the goodwill of the employer and then somebody has to complain.

Ms. Griffin: Exactly.

Ms. Gigantes: It is a neat thought.

Can I go on to the question of the definition you are providing for equal pay, which is the elimination of systemic wage discrimination, and try and relate that if I can to the notion incorporated in this bill and the previous Bill 105, that the comparison base between jobs should be a comparison of a woman's job class occupied at least 60 per cent by women and a male job class occupied at least 70 per cent by males.

When you talk on page 14 about the freedom to negotiate outside of a very rigidly defined job evaluation system and the fact that you would like to see unions able to do that in co-operation with employers, and I think of having flat wage adjustments as opposed to percentages or having base entry rates equalized as the Canadian Union of Public Employees has tried to do in the past, will that affect the 60 per cent and 70 per cent job comparison test?

Ms. Griffin: Absolutely. We think the 60 per cent and 70 per cent test is an artificial barrier that should not be there. We did not address it specifically because the Equal Pay Coalition is going into that in more detail than we have and we support their position on it. Just as we made the point when we were here in front of this committee on Bill 105, we are opposed to the 60 per cent and 70 per cent criteria because we think it creates an artificial barrier and is unnecessary.

Ms. Gigantes: We have heard arguments in the past from Liberal members of the committee dealing with Bill 105 that the only way to define

systemic wage discrimination is to set some kind of job predominance test and compare female groups with male groups on some kind of test basis. I take it that is a notion you are rejecting.

Ms. Griffin: Absolutely.

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Ms. Fish: Let me begin by thanking you all for coming before the committee yet again, this time in the context of a slightly different bill, but touching on many of the same issues. I want to confirm one element that Ms. Gigantes touched on as well, which is the complaints base mechanism. That is only in areas of 100 employees or fewer who are nonunionized. Is that correct?

Ms. Griffin: Right.

Ms. Fish: You would not see that as a mechanism for unionized firms of any size.

Ms. Griffin: Absolutely not.

Ms. Fish: On page 11, right at the top of the page, where you talk about pay equity being achieved when the wage differential between female and male job classes is reduced by an amount attributable to systemic wage discrimination, how do you see that amount being determined? Is it different by each firm or would you take a general estimate across either the public or the private sectors?

Ms. Griffin: I think it probably varies from firm to firm, although there is also a general perception of what it is. The 37 per cent is not all attributable to systemic wage discrimination but a certain portion of it is. There are a number of statistics and a number of expert opinions about how much of that is attributable to systemic wage discrimination, but I think you would have to look at it on a case-by-case basis.

Ms. Fish: Do you see that figure as coming out of the job evaluation, job comparison test of skill, responsibility, etc.?

Ms. Griffin: Right. The four criteria.

Ms. Fish: How would you find that figure if the redress on pay equity were done other than through job evaluation, because you also recommend the possibility of integrating pay line, for example? Are you suggesting that there be a job evaluation first to find that figure and then implement it through an integration of pay lines, or have I missed something?

Ms. Griffin: Not necessarily. It depends on the work force and it depends on the work place. I think the individual parties are the ones who are best suited to determine what the gap is, how much of it is attributable to this and to find the method to deal with it. In some cases, it is strikingly clear.

Ms. Fish: Sure.

If the agreed-upon method is the illustration you gave of integrating the pay lines, would you then see the figure of the wage differential as attributable to gender-based discrimination being something that had been



negotiated between the parties? I can see how you would find that figure if you were using a job evaluation technique. I am a little unclear as to how you would find it if you were using another approach, such as integrating of pay lines. I am just curious whether you had thought about that?

Ms. Griffin: Not in extensive detail. We know this is a method a number of our affiliates would like to have the opportunity to explore and it may turn out, once it is explored, that it does not meet the needs. They may have to go back to job evaluation as we said in our preamble to that point. Again, we think the workers in the work place know best what the problems are and they are best suited to come up with the solutions.

Mr. Chairman: Any further questions from members of the committee?

Ms. Caplan: No. I just want to point out that on page 19 of your brief you refer to amendments to Bill 105, which is not before the committee at this time. In E1 and E2, I refer you to the draft legislation of Bill 154, where subsection 13(2) deals with the issue of bargaining in good faith, and on page 16, subsection 8(2) deals with the protection of reprisals in Bill 154. I want to point out to you that it is covered in this legislation, and so those two points are not valid in your criticism of the bill that is before us.

Ms. Griffin: Absolutely. We understand that and that is why they strike us as necessary in Bill 105. We are concerned that these two bills are out there and we would like to see them both be very similar. That is something that is explicitly missing in Bill 105 and so we took this opportunity to raise it because it is the same committee.

Ms. Caplan: The only point I am making is that on the front it says it is a brief on Bill 154 and then you made some comments on Bill 105. I just wanted to make sure you understood.

Ms. Griffin: We understand clearly. It is a very deliberate intention of ours to include a couple of points about Bill 105.

Ms. Caplan: Okay. Thank you.

Mr. Chairman: I would like to thank the delegation from the Ontario Federation of Labour. On behalf of the committee, we appreciate your representations before us. We will take them into account as we deliberate the amendments to Bill 154.

Mr. Wilson: We have about five minutes left. Maybe you could give us that at the end of the hearing and we can use it for rebuttal.

Mr. Chairman: That is a comforting thought, is it, to members of the committee?

I would like to call forward the Business and Professional Women's Clubs of Ontario. For purposes of the Hansard report, I have three names on my list: Ms. Kris McDonald, on the right; Ms. Carol Lohnes; and Ms. Trudy Bolduck. Would the fourth person please introduce herself.

Ms. Neville: I am Liz Neville.

Mrs. McDonald: I believe you called me "Ms. McDonald." I am a Mrs. and I worked very hard for that degree.

Mr. Chairman: I have "Ms." down here; so I will call you Ms. or Mrs., whichever you prefer.

Mrs. McDonald: Call me Kris.

Mr. Chairman: Kris, now that we are on first-name basis, just call me Andy and we will get along just fine.

Whenever you are comfortably seated, you can get on with your presentation. We welcome you to our discussions on Bill 154.

#### BUSINESS AND PROFESSIONAL WOMEN'S CLUBS OF ONTARIO

Ms. Neville: I was intending to introduce the members of our panel and I think I would still like to do that because it is important that you know our backgrounds.

I am Liz Neville, president of the Ontario Business and Professional Women's Clubs. I am from our Toronto club. My background is in personnel administration in the private sector and in municipal government. Kris McDonald is from our North Toronto club and has had an extensive career in insurance in both Canada and the US. Carol Lohnes from our Toronto club has been in human resources management in the private sector, has a family and lives in Ajax. Trudy Bolduck is from our Sudbury club and is the owner of a hotel with 50 to 60 employees.

The Business and Professional Women's Clubs of Ontario are an affiliation of clubs throughout the province. Our club membership represents, as we do here and with the people who are sitting behind us, a wide diversity of women in professions and businesses and consists of business owners, managers and employees in both the public and private sectors at all levels.

Ontario clubs are members of the Canadian federation, which was founded in 1930 and are members in the International Federation of Business and Professional Women with membership in 66 countries and with category-1 status in many of the United Nations organizations.

We have been a leading voice for action on equal pay for women for many years. We have appeared before this committee several times, as you are no doubt aware. We are particularly proud of the fact that in 1951, at the time that the International Labour Organization convention was passed by that body, Margaret Hyndman, our then president, was instrumental in recommending the implementation of the first Ontario equal pay laws.

We were one of the founding members of the Equal Pay Coalition in 1976. We are very pleased and we commend the government for its positive action in introducing Bill 154 and also the opposition parties for their support in principle. Our member clubs throughout Ontario have been actively involved in the process of bringing us to Bill 154. Our submissions stand as a record of our continuing commitment to the concept of equal pay for work of equal value.

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The Business and Professional Women's Clubs of Ontario see Bill 154 as a foundation for fairness. It is a positive step forward in the process of removing the systemic gender-based wage discrimination in almost all sectors of Ontario's work force. We believe that with amendments Bill 154 can become a model for all sectors for comprehensive legislation on equal pay for work of

equal value between female and male employees. This is required, as we well know, to eliminate the disparity in remuneration in the male and female wage gap caused by historic and societal gender-based wage determination.

Of the many positive things we find in Bill 154, we are particularly pleased that the term "compensation" encompasses both wages and benefits paid to employees. We shall not be elaborating on the why of that, but we are very pleased.

We welcome the affirmative, proactive approach to pay equity which Bill 154 requires in the broader public sector and particularly in the larger organizations, as it is now written, in the private sector. However, our position, as stated in our previous presentations, remains that the goal of pay equity based on gender predominance ratios is not sufficient. The pay equity process has merit only if it is used as the first step in a means to remedy quickly the well-documented imbalance in the wage gap.

Bill 154 continues to rely on comparisons determined by gender predominance ratios, with some flexibility, but still 60 per cent predominance of women and 70 per cent predominance of men. While this is useful to achieve rough justice, numerical ratios are not a substitute for individual rights. Women in jobs that are not predominantly female, but who are nevertheless paid inequitably, will not be eligible for wage adjustments until we go further than the bill takes us at this stage.

I am going to summarize briefly the major recommendations and I am going to read those from what is in fact our press release, because the other members of my group will be elaborating on particular sections from their own experience.

Our first major recommendation is that an explicit statement is needed in Bill 154 to affirm that the ultimate goal of the pay act is equal pay for work of equal value. We see this as going into the preamble of the bill.

Second, powers are needed for the pay equity committee to establish the pay adjustment for women in all female work places such as child care centres and libraries.

Shorter time frames are required for the start and completion of wage adjustments so that all adjustments will be completed by five years from their start. Priority must be given to women who are paid the lowest wages and especially to women needing retirement.

Our organization, as you can tell, is a long-standing one and we have many greying members in our organization. We also have a great many, some of whom are here today, who have already retired and suffered enough from the inequities in their wages in the past.

A further way in which the time frames must be shortened is by simplifying the timetable by grouping the private sector into two groups instead of five and also covering all employers, including those with fewer than 10 employees.

The pay adjustment must be made at the highest rate of pay where more than one male job is considered equal or comparable to a woman's job. We must include all part-time and casual positions in the pay equity plan. We must reduce the number of exclusions, especially to delete temporary training positions and temporary skills shortages as a reason for paying higher wages.



The implementation provisions must be strengthened. We have not made specific recommendations on these in most cases, but our concerns addressed in the brief include the need for adequate resources for the pay equity commission; to provide education as well as enforcement; to improve access by employees to information about wages and job requirements, and to improve methods of monitoring to ensure that pay equity is maintained. There should be contract compliance for firms doing business with government agencies and provision of a separate tribunal to decide on cases and to hear appeals not yet settled by the Pay Equity Commission.

In addition, I would add that there should be explicit conditions for the Pay Equity Commission to file complaints where there are reasonable grounds and for third parties to so act.

We have also expressed concerns in our brief on the measures that are already beginning to happen to avoid evasion in the transition stage and the likely evasions that will occur afterwards.

I am going to pass this over to Kris McDonald to elaborate on our first two recommendations.

Mrs. McDonald: As I am sure you know, much serious thought and a great many personal experiences went into our organization's position on this issue. I would like to share with you an example from my own life.

I have two teen-age sons. One of them works in a restaurant here in Toronto. He was originally hired as a busboy--a male-dominant job class, to use the Bill 154 jargon--at \$4.35 an hour. The waitresses in the same establishment, all of whom are female, earn \$4 an hour. They do get tips, you say. There are two problems with that. First, it is a pizza joint and tips are not a biggy there. Second, they have to share 15 per cent of their tips daily with the busboys.

We all have to admit that it takes a lot more skill, effort and responsibility to be a waitress than to be a busboy. My 17-year-old son has complained repeatedly about the mindlessness of his busboy position, but he is the one who brought this condition to my attention. How do I, as the progressive mother of intelligent teen-age sons, explain this situation?

In Bill 154, because this establishment has fewer than 10 employees, it does not count. It is imperative that we include all establishments in pay equity legislation. By eliminating those employers who employ fewer than 10 workers, nearly 250,000 women in Ontario will be excluded from what we hope is a foundation for fairness. It is not acceptable to our membership, which includes among its members employers and employees in small businesses, that they should be excluded entirely from this legislation.

While it may be true that supply and demand will take over in the long run and eventually things will work out, we feel it is particularly important that the charter right to equal protection under the law should be maintained by this legislation, even within the affirmative action pay equity stage where male and female predominance ratios must govern.

Now, I will turn it over to Trudy Bolduck for some more personal experiences.

Ms. Bolduck: The areas I wish to address are the shortened time frame and the adjusted structure for coverage.

Under the present proposed division, we have several groups breaking the employees down 100 to 499, 50 to 99 and 10 to 49. We do not see the rationale for dragging out the divisions. We feel 100 employees would be a logical dividing line for both administration purposes and for shortening the implementation stage, so one group would be over 100 employees and only a second group being under 100 employees. With this, there would be a two-year time frame above 100 and a three-year time frame below 100. Giving each group five years for implementation, under our proposed schedule all implementations would need to be completed within seven years in the broader public sector and eight years in the private sector.

We realize this changes the percentage of the payroll. However, we feel it could span almost a woman's work career and many women would be well into retirement under the present proposed schedule. Even though there is an increased expense, we do not see that the expense should be carried by women as it is now.

With regard to the 10 per cent, the employees under 10, this represents 238,000 women in 1985 and it is not acceptable to our organization, whose membership includes both employees and employers like myself, that they should be excluded. We realize that women are now starting more small businesses than men and they have a higher success rate. We feel they will absorb this responsibility, as I certainly do as a business woman.

Ms. Lohnes: As Liz said earlier in the brief introduction, I am a human resources practitioner. I have 12 years of experience describing, analysing and evaluating jobs, using a variety of systems, some complex, some fairly simple, with a variety of employers in the private sector. I have worked with employers who had 4,000 employees; I have worked for a small retail firm that had 82 employees.

Always being the only female member on evaluation committees, I am very familiar with the opportunities for gender bias that do creep in and can creep in at every step. There are traditional market values that tend to perpetuate themselves, the traditional undervaluing of typically female jobs and the personal biases of the evaluators, which have influenced the outcome for assigning value and therefore the compensation that is paid for those jobs.

What I would like to deal with is the need for further comparisons in the pay equity stage. One method can be used to compare the jobs. It does not matter what that system is as long as the same factors are used and it is consistently applied. It can be complex or it can be simple, whatever is deemed necessary for that particular establishment.

As employers, employees, managers and business owners, we see no reason for small employers to be excluded from this legislation. We see no reason for the lengthy implementation period. We see no reason for part-time or casuals to be excluded, because that is where the traditional jobs are and that would defeat the purpose of the bill.

The steps at this pay equity stage are relatively simple, but because of the time constraints I will not go into the details. The major concern we have in this process is at that stage where it has already been determined which of the female jobs are to be compared to the male jobs. Our concern is that adjustments should be made to the highest male rate, not the lower, where more that one male job is considered to be equal or comparable to a woman's job.



I would like to read a couple of sections from our brief, on page 5, dealing with this issue.

We have emphasized that where equal or comparable value is established with more than one male job class, the pay adjustment be made to the male job with the highest rate. Our position is based, first, on experience that there is a somewhat logical relationship between the value of work and job rate within gender-based job groups, especially within male job classifications.

Second, many of the lower-paid male job ghettos have characteristics associated with women's work; that is, the work is related to domestic tasks. Often the only reason these jobs are paid slightly above minimum rates is the male breadwinner syndrome.

Third, we consider that after the long history of systemic injustice, women are entitled to a maximum remedy to catch up to the comparable male jobs at the highest rate. This injustice is further perpetuated because Bill 154 provides only for the situation where the comparison male job class has a higher job rate but the work has a lower value than the female job class. In this case, where there is more than one such male job class, the pay adjustment is made only to the level of the highest job rate. We urge comparison with a higher-valued male job and a proportionate pay adjustment.

We also urge that the comparison must be establishment-wide so that, for example, if there is no male job at a higher job rate within a bargaining unit, you should be able to go outside the bargaining unit to compare.

There is not enough time today to go into the technicalities of making fair comparisons. We have spelled them out in our brief under recommendation 4 and we urge you to give these careful consideration for incorporation into the amendments to this bill.

Ms. Neville: I think we want to go back to Kris for a moment on temporary training exclusion.

Mrs. McDonald: The Business and Professional Women's Clubs of Ontario addressed in our brief the exclusions listed in the bill and we ask you to remove some of them. One of the exclusions mentioned is the trainee position.

I began my illustrious life insurance career in a clerical position and moved through to a senior clerical level in a short time. The boss--I assume because he saw a glint in my eye and a certain hunger about my visage--asked me one day if I would like to learn to be an underwriter. I was thrilled. Enthusiastically, I agreed and I began my training, meanwhile being paid a senior clerk's wages and being called an underwriting trainee. I continued on this path learning to be an underwriter. By the way, the only way to learn to be an underwriter is to underwrite, sort of on-the-job training.

I received periodic raises, much praise and increasing authority to approve insurance coverage. After I had been an underwriting trainee for four years--and one of three underwriting staff members in the company--they decided to hire a young man who was just out of university to be trained as an underwriter. He had no work experience other than in summer employment and had absolutely no background in the life insurance industry. His starting salary was \$3,000 a year more than mine. Mark was called a junior underwriter. It was not until I changed employers that I managed to escape from the permanent trainee trap.



Ms. Neville: These traps are a part of all sorts of aspects of the job ghettos that we get into.

In choosing to appear before you on the first day, we have been under some pressure to decide exactly how to present, so I do want to take you back to page 3 because another of the traps of women's positions are the areas of totally female work places. I would just like to draw your attention to that. We were not initially expecting that equal pay legislation would cover this problem of the totally female work force at this stage, but we feel that the government and the public have recognized through this past year and a half of process that there is a commitment by the government to give priority to these solutions, and we see that this means there are perceived methods out there that could be used to cope with the question of the all-female work force so that we do urge that the Pay Equity Commission of Ontario be given the power from the beginning not only to look into this but to deal with this problem of the all-female work force.

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Coming back to the other exclusions, the one I want to address particularly is the skill shortage issue. This has always been of particular concern to us. We have said repeatedly that there can be long-term skill shortages in women's work which never result in a shift in compensation--we have seen a demonstration of that recently with the nurses--whereas inflated compensation, as the act calls it, is rapidly invoked when the skill shortages occur in men's work and are maintained indefinitely. We never hear of cutbacks in those rates after that.

The thrust of the remedy is to improve substantially all forms of training and employment equity measures for women so that they can gain the skills and find acceptance in the areas of skill shortage, but that is another long-term solution.

Changes in our employment structure also cause us distress, as Carol mentioned, that casual workers must be included under this legislation. Again, being concerned with ensuring that regular or permanent part-time employees, most of whom are women, benefit from equal pay legislation, we particularly recognize that definitions of part-time work are very important to the implementation of this principle, and work place terms often confuse the issue. We have always stressed that it is the actual work and hours worked that should determine how legislation applies.

On-call casual employees work in specific positions which exist on an ongoing basis. On-call employees often work much more than or at least as much as regular part-timers. These positions and the gender of the workers who are employed to fill them, whether each person works on a day-by-day or week-by-week basis, can easily be identified. Why I refer to the structure of the work place changing is that we are aware that on-call work is rapidly replacing regular part-time assignments and full-time assignments. That is why our position is changing. We feel the definition should be that all part-time positions where the employee works less than the full work week or less than the full work month should be the one used in the pay equity plan.

I want to address quickly the measures we feel will lead to effective implementation, and we feel the role of the Pay Equity Commission is crucial to the success of this act. We have read a great deal in the press in the past couple of weeks, and it is ongoing, although not in this morning's Star. I gather things are changing, which is wonderful to hear, but there is still a

great deal of resistance to carrying out the positive action required by Bill 154.

Some people are even denying that the wage gap is founded on any injustice to compensation practices. It is essential therefore that the Pay Equity Commission have sufficient resources to carry out an extensive education program as well as being able to follow up on a timely basis, and the powers of the review officers should include the right to make spot checks after the dates at which the pay equity plans are expected.

We are concerned that there be increased provisions for access to information. Employees just do not know the wages in their work places, not even the wage ranges, and they do not know the specific requirements in most of the private sector with respect to the requirements for the job.

The right to third-party complaints is written into most of our human rights legislation at the provincial and federal levels. Of course, it should be possible for the Pay Equity Commission, but also for other third parties with reasonable ground for considering that there has been a violation of the Pay Equity Act, to file a complaint.

I mentioned in my summary our concern that Bill 154 does not require government agencies to ensure that pay equity plans are in place in those firms with which they do business. Perhaps it is thought that coverage of so much of the private sector is sufficient, but we think this would assist the monitoring of this process. I think we do need to clarify the appointment of an independent tribunal to carry out the appeal when the Pay Equity Commission of Ontario cannot effect settlement.

With respect to evasions, we have thought long and hard about this one, and we know it is the most difficult problem of implementation. Section 20 of the bill, unfortunately, sets a poor example by establishing that during the transition stage, existing compensation practices may continue, including compensation changes on a percentage basis, even though the changes will result in fewer dollars for a female job class than for a male job classes and thereby widen the wage gap that the legislation is attempting to correct. At the very least, we urge that this is another reason for speeding up the start of pay adjustments so that there is not as much time for this gap to be extended.

We have heard several stories that the freezing of wages is already happening, particularly to men's jobs, so that the amount of increase will be lower. It is very difficult to legislate this, given that this is not a practice which we legislate in general. Employees, not even within the bargaining groups, can necessarily expect this, but I think this is another area where the principles of the bill are important. We feel the provisions of Bill 154, which support the principle that wages shall not be reduced in the implementation of pay equity, should be acknowledged in good faith by government and employers so that the unfair burden which otherwise will result on male workers is avoided.

We are also concerned with the fact that after we have got to this state of pay adjustments, then the bargaining strengths can prevail. The Ontario Federation of Labour just stressed this in detail, and we fully concur with that view, that to revert to previous pay relationships which have arisen in part because of the gender-biased values of men's role in the work place would be to negate the rationale for the legislation.



In conclusion, women workers in Ontario have waited a long time for effective legislation to remedy the wage gap. The Business and Professionals Women's Clubs of Ontario have understood the resistance to changing long-established practices and attitudes. We also recognize that the Pay Equity Act, even with the amendments we have proposed, cannot remedy all aspects of employment equity. Further action is needed to create true equality of opportunity in the work place. We also consider that the Pay Equity Act is a minimum standard on which employers and unions can build fairer compensation practices if they approach the process in good faith.

We therefore support Bill 154. It is a landmark in equal pay legislation in North America. It will give us a foundation for fairness. The amendments we are suggesting will reinforce the structure that is proposed in the bill to achieve significant improvements in the long-standing inequity and will, we think, lead to full equal pay for work of equal value. We urge the standing committee on administration of justice to support the amendments we have proposed and we look forward to speedy enactment of the Pay Equity Act.

Mr. Chairman: Thank you for your presentation. We have questions from the committee, starting with Ms. Gigantes.

Ms. Gigantes: I would like to compliment you on your brief and also on the very powerful examples you have given to us from your personal careers and your families' careers. I have a young person in my family, a girl in this case, who has also recently become a bus person. She has found that in the work place she is engaged in on a part-time basis there is no percentage that a bus person receives receives from waiters or waitresses. The waitresses, however, have tended to give her a share of their tips. The waiters have not. She is learning about life the hard way.

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Could I go to a couple of specific points in your brief? One is the whole question of equal pay plans and the complaint system. The more I think of it, the more I am concerned about a division in the operation of this bill based on the size of firm relating to small firms which do not have to have an equal pay plan and large firms which do.

If we take, as you recommend, a cutoff point of 100 employees and determine not only the mechanism but also the time frame for implementation of this legislation according to a division based on 100 employees in a firm, I would like to know more specifically how you think employees in a firm employing fewer than 100 people are going to find out (1) what their situation is and (2) what mechanism do you suggest is going to be effective, particularly as most of them will not be in an organized work place in the private sector?

I am concerned about that. I have forgotten the exact figures, but there is a large percentage of women employed in the private sector who are nonunionized and who are employed in firms of under 100 employees. You have talked about the need for information for employees, but how do employees get information on which to base a complaint if there is no plan?

Ms. Neville: We have addressed that concern in part by urging that there be the requirement to make more information available to employees. We have not gone so far as to suggest that such employers should post a plan, and we have not gone so far as to suggest that the complaints should be based on pure equal value without the use of the job class predominance for the small employers.



This is also where the role of the Pay Equity Commission to provide education for both employers and employees is extremely important, combined with the extra information that the employers should be required to make available to employees through the Pay Equity Commission if necessary, but it would be preferable if the bill were strengthened in that area so that employees could get this very difficult information.

Ms. Gigantes: From your personal experience, do you think it would be a grave imposition on employers of a size under 100 employees to post a plan over a two-year period?

Ms. Bolduck: Material should be made available to employers in assisting them to draft a plan. I do not think an employer of 20 people is going to have an idea of how he is going to evaluate the job to date, but if the material is made available, such as on these other areas you are looking at, I feel an employer of 50 to 75 people or 20 people would be able to cope with that. I guess what I am looking at is a bit of a blueprint to hand them, suggesting--

Ms. Gigantes: Here is how you can do it.

Ms. Bolduck: --"Here is what your plan should look like," with some variations on who the employer is and what his area of employment is. There should be more material made available so that it is a ready package to the employer.

Ms. Gigantes: I see two alternatives--

Ms. Neville: May I just say we do not think that to require those smaller employers to post their plans is the extra step we want to go. We hope many of them will because that will clarify the information to their employees, but we feel it is reasonable to provide some more flexible arrangements for smaller employees perhaps, recognizing that close to 40 per cent of the work force, if not more, is within that 100-employer group. We would rather see the inclusion right down to zero size of employers than go as far as to impose that extra requirement at this stage on the fewer than 100 employees group.

Mrs. McDonald: In addition to what Trudy said about the how to kit being available to a small employer, this would be reasonably simple to provide, entrepreneurship being alive and thriving in Ontario. I personally know of two books about how to implement a pay equity plan that are presently being written and being presented to publishers. By the time we get to 100 or fewer employees, there is going to be a lot of history and experience to fall back on about how to do it, even if they are not required to. It may be easier for them to post a plan than not to.

Ms. Gigantes: In the old days, we used to say there were three things one did not discuss in polite company: money, politics and religion. I guess sex was included, making four.

Mr. Ferraro: They must have had boring parties.

Ms. Gigantes: I do not know what your parties were like.

Mr. Chairman: May I get in a supplementary by Ms. Fish?

Ms. Gigantes: If I work in a firm with 30 employees, how I am supposed to know if my job is roughly comparable? I may never see the person whose job might be compared to mine and how do I know what that person earns?

Ms. Neville: We have expressed that concern. I know that in working in a large retail store of 5,000 employees it was impossible to get to know what other people were paid. If you did ask too many questions, that was a reason for your being out on your ear. We have a long way to go in making this information available to employees. Therefore, we did not press the point.

Ms. Fish: Am I correct in understanding that your brief, in dealing with the fewer than 100 employees and nonunionized, takes the complaint-based system right down to zero to include the rest of them.

Ms. Neville: Yes.

Ms. Fish: You are talking about feeling it is more important to come down to that rather than posting plans. Your recommendation is to eliminate the exclusion or exemption for fewer than 10 employees. That is practical.

Ms. Bolduck: That is correct.

Ms. Gigantes: I have one further question regarding the matter mentioned on page 8 of your brief, which has to do with the possible evasion of equal pay. Under the section at the bottom of the page headed "Deter Freezing of Wages," what you are saying in another form, if I understand correctly, is that you do not want to see annual wage increases restrained and the extra money used to provide equal pay payments.

Ms. Neville: Yes, I am saying that as well. We tried very hard to see if we could word a recommendation that would place that clearly in the bill, but in the end we have, for the moment, given up because this is just not legislated in general, except where there are cost of living allowance clauses.

Ms. Gigantes: We did have restraint of wages legislation, which does not relate exactly to this.

Ms. Neville: Yes.

Ms. Gigantes: Would you feel that if it were possible for an employee or employees to go to the Pay Equity Commission and say over the last three or five years we know that generally we have had a three per cent increase, if the inflation rate has been four per cent, and if they were able to document such a case, then the onus would be on the employer to indicate whether he or she had been restraining wages?

Ms. Neville: Solely for pay equity rather than to meet the conditions of business?

Ms. Gigantes: Yes.

Ms. Neville: I think it could be approached in that way. It is a very much more difficult one to come up with the right answer, because the needs of business, particularly small business--and I should really let Trudy speak to this--are very much more complex perhaps than straightforward. We do think that the spirit of the legislation should be acknowledged by everyone

concerned that the intent is not to reduce men's wages. In the long run, this will be no problem.

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Ms. Gigantes: I am concerned not only about men's wages, but why should I, if I am a woman who is eligible for an equal pay adjustment, be paying my own equal pay adjustment out of a reduction in my annual general wage increase.

Ms. Neville: That is true.

Mr. Dean: I just have a question for Carol Lohnes. Where you were discussing the situation where there might not be a comparable male job rate with the employer which a woman is serving, I thought you said such a person or group, in trying to arrive at pay equity, should be able to go outside the unit for comparison. How wide a net would you cast for that and how would that really work?

Ms. Lohnes: We are proposing within the establishment, because within one establishment or one employer there can be a bargaining unit and a nonbargaining unit. Initially, you would compare within the bargaining unit. If there is no higher comparable male job, then you would go outside the bargaining unit but within the same establishment.

Mr. Dean: Assuming there would be something somewhere that would be comparable within that establishment where you had more than one unit?

Ms. Lohnes: Yes.

Mr. Dean: I wondered if you were going to search the highways and byways to find it.

Ms. Lohnes: That would be the next step.

Ms. Neville: That is only with respect to the all-female work force. I want to make clear that what the bill now provides is that you can go outside the bargaining unit and that you can choose to compare the job with male jobs that are higher rated but of lower value, because even in the wider establishment an equal comparison does not come up.

What we are saying is that you should first look for a job which is of slightly higher value than the woman's job if you do not have an equal comparison, either in the bargaining unit or in the wider bargaining unit, and then, only as a last resort, compare the woman's job class with a lower valued male job class. The pay adjustment in either case, whether they are being compared with an equal, higher or lower valued job, should be proportionate to that value, not just to the highest rate of a lower valued job. The legislation does not allow for the comparison with higher valued jobs anyway.

Mr. Dean: It sounds like a fairly complex procedure.

Ms. Neville: Where firms do undertake it--and many of the large firms will, and with the smaller ones it is really so obvious that if there is real good faith about this the problems are more perceived than real--employers will tend to do this and broad job evaluation plans will lead to these relativities being in place from the beginning. Without going as far



as to impose the sort of job evaluation schemes across the board, we think it is essential to include this possibility.

Mr. Dean: It sounds like a fairly complex procedure if you come across a situation like this.

Ms. Neville: That is the problem. It sounds complex, but when you get into the work place and you are a compensation analyst, or even if you are a business manager dealing with what wages to pay people, it comes down to the same fairly straightforward rule we have always been working with but with a different set of values attached to it.

Mr. Dean: I can certainly see that each work place will have its own constraints, no matter how much goodwill there is on both sides. The thing I see as extremely important in this whole issue is that we do not in the name of justice create such a stringent set of boundaries that goodwill is hemmed in.

Ms. Neville: That is true, but in the name of justice we must also provide that women catch up as quickly as possible in pay for the full value of the work they are doing.

Ms. Lohnes: I think it is also critical as well to realize that most of the members of our organization are employers. We are managers, business owners and human resources practitioners. We are the ones who are going to have to live with this legislation; so we are not about to recommend things we are not going to be able to live with. We have looked at it very carefully. I think we have been looking at this since about 1930 and we have tried to make it as straightforward as possible. That is not to say there are not going to be difficulties, because there are.

Ms. Fish: Just as a clarification, in answer to Mr. Dean's question on how wide the net is when you go beyond an employment establishment, did I understand you say you would do that only where there are no male jobs within the establishment?

Ms. Neville: Yes, that is correct.

Ms. Fish: Only if there are no male jobs at all?

Ms. Neville: Yes, that is our second recommendation. That is quite different from the establishment-wide area where there are other male jobs.

Mr. Ferraro: I would like to thank the ladies for their presentation as well. Could you give me a guesstimate as to what proportion of your association would be in the small business sector? By that, I guess less than 50 or 100 employees. Would you have that figure?

Ms. Neville: Unfortunately, I do not have the figure. My guess would probably be around 50 per cent and a higher proportion of our younger members. We only have Trudy Bolduck here representative of that group at the moment, but the work up in Sudbury has been rejuvenated in the last few years.

Ms. Bolduck: Yes. We have many entrepreneurs in our Sudbury group, small business employers. It is quite surprising.

Mr. Ferraro: In that context, and with a little bit of a preamble, one of my major concerns with the implementation of pay equity, which I support, is basically a big distinction between the large companies and the

small business persons. As you are saying, that is like motherhood. The large company can afford to do it and has the time and expertise and the little person does not necessarily have those or the bucks to implement it.

One of my major concerns, as I am sure everybody is concerned with, is that implementation of pay equity to the small business firms--and I think it has been indicated by certain women's groups--could be regressive. I brought this up to the previous delegation. I want your comments if you think that is a totally nonsensical statement; in other words, people, men in particular, are going to refuse to hire women. Do you think that is a serious contention?

Ms. Bolduck: If they do not hire women, they are going to hire men who we are already saying are being paid higher. Where is the rationale there?

Mr. Ferraro: Analogies were given in this regard. Let us take a small businessman--I am getting the ammunition ready for when the other small business groups come in; I am not advocating this position, ladies, so please do not start throwing glasses at me.

Ms. Bolduck: A few ice cubes.

Mr. Ferraro: You can. Do you have any Scotch to go with them?

If a small businessman starts up a business and he knows he has to pay a woman, and he should, the same as he pays a man, is it not possible that he is going to hire a man because perhaps he may need the physical strength of this man to do some other job?

Ms. Bolduck: Perhaps the role he wants this employee to fill is a role that is traditionally held by women having those skills.

Mr. Ferraro: Yes.

Ms. Bolduck: If you want to get a male secretary to haul bundles of hay, go ahead.

Mr. Ferraro: I am not advocating this position. I am just trying to get ready for the argument.

Ms. Bolduck: Can I say one thing? The other thing is that in places where pay equity has been implemented, the results have not been that women have suffered. They have not been laid off in great numbers in the countries and states where it has been implemented.

Mr. Ferraro: In defence of myself, I think the Ontario women's directorate has come out and said this is one of its concerns, that employers will refuse to hire women.

Ms. Bolduck: I think I have read everything they have published and I have not read that.

Ms. Fish: Where do they say that?

Ms. Gigantes: Wrong.

Mr. Ferraro: Am I wrong? I am wrong. I stand corrected.

Ms. Neville: Could I just add another part of my experience, which I did not refer to in introducing myself?

I was one of the first investigating officers under the Women's Equal Employment Opportunity Act in 1970, which was the forerunner of the provisions that are now in the Ontario Human Rights Code and of course this argument was put forward. It did not happen then and it will not happen now, that there is any real impact on the implementation of the attitude you are suggesting because it just does not work like that. Women are an important and necessary part of the labour force. They will be hired. There are not the men out there who will do the kind of jobs women do. What we hope is perhaps that will help to interact with the equal opportunity measures and encourage or at least make it possible for some men to go into what are now women's jobs because they will be better paid and thus free up some of the men's jobs for the women who would be perfectly capable of doing them.

1150

It just does not work anywhere, as Trudy has said, not here in our own province or throughout Canada that either employment equity or equal value--they said the same thing in the past; I was in a large department store in the 1960s when the equal pay laws were changed and it was said then that employers would not hire men. What they did was to evade the law at all costs, but it just does not work like that. People think it will, but it does not.

Mr. Ferraro: I will end with this, Mr. Chairman. The derivative of the whole question is, and thank you for stating that so explicitly, does your association not think that more consideration should be given to employers who will need to address pay equity with less than 10 employees than, say, ones with over 50 to 100? Do you categorize it all under 100 essentially the same?

Mrs. McDonald: With a small business, the implementation of pay equity is exceedingly simple. In a small business with fewer than 10 employees, you have a secretary; let us say you have a secretary-receptionist perhaps. That is 100 per cent female. You do not have to worry about percentages because you have one stock boy, one man who works the heavy machinery and the boss. Because you have so few numbers, you have very clear categories of jobs so that there is a very clear road to implementation. The smaller the business, the easier it is. When you get into the large businesses and the multitude of job categories, job classifications and percentages of female or male dominance, that is when things can get a little more complicated, but when you have six employees, it is really simple to figure out.

Mr. Ferraro: How do you account for the strong opposition from the small business associations? I understand what you are saying, but how do you account for that?

Mrs. McDonald: I think we have a basic fear response.

Mr. Ferraro: It is just a difference of opinion, really. There is a lot of disinformation and lack of understanding because if you look at the legislation, it seems very clear, but many of the small businesses are not looking at the legislation. They are not figuring out how to implement it. They are panicking at the headlines.

Mr. Ward: I want to get back to the point you were making on the gender predominance. First of all, in terms of the female-dominated establishment--I guess the child care worker has been the most consistent example--you make the recommendation in that regard where you specifically suggest that the Pay Equity Commission go outside of the establishment and find a comparison. Can you elaborate perhaps on why that is the most



appropriate mechanism for that? I guess the major concern arises once you go outside of the establishment anywhere in this legislation and you open it up to that across the board. That seems to be a very major concern.

Ms. Neville: I do appreciate that. We would have sat back and said nothing further on this point beyond our regret if there had not been such a strong statement by the Attorney General (Mr. Scott) when he presented the legislation that this would be one of the priorities of the commission to solve this process.

We feel there have been many suggestions on how to solve it, one of which is the fact that in the two categories I have mentioned--I am not sure it would apply to all categories of workers, but in the two kinds of jobs that I have presented--these jobs are also performed in municipalities where there are comparisons with other male workers. We are suggesting that one does invoke the market rate a little bit around here and that you have got a market rate. In fact, that is very often why the jobs, even in the municipalities, have been kept at a low rate. It is the total market rate that is applying. So if you get the rate up in the public sector area, you could use that as a sort of benchmark for these other workers.

It is departing from Canada's compensation practices, but I think it is just not fair to these large groups, and I may say perhaps especially the day care workers, who are an essential service that we need to further this whole employment equity question. The government itself is proposing that we have more and it supports private day care. This is where we get into perhaps the possibility of contract compliance in these areas. How can you have contract compliance to pay equity where the organization is receiving public funds if the organization itself is not structured to be able to implement that legislation?

These things could work in together. We would like to see the legislation take that one step further as the possibility has been strongly put.

Mr. Ward: I think it is conceded by everybody that it is a major concern. I suppose one of our tasks is to search for that solution. You have made one very specific suggestion in that regard. All I can say is we would welcome any further elaboration or thought on the part of any group that is before us to help us wrestle with it.

Ms. Neville: I think you will be hearing more about that.

Mr. Ward: I want to return very briefly to the whole issue of the 60 per cent and 70 per cent numbers. We heard some comments and criticisms of that. You talked later in your responses to Mr. Ferraro and others about the need for some clarity and defining workable solutions. This legislation does not specifically limit it to those numbers.

Ms. Neville: No, not entirely.

Mr. Ward: There are many instances where the Pay Equity Commission can come in and make a determination in terms of those with bargaining units. There is all kinds of flexibility, including historical incumbency.

If you are going to have a proactive model, particularly in the private sector, do you not feel the need to establish some thresholds and frameworks from which they can build their proactive model? This bill does not limit it strictly to that 60 per cent or 70 per cent.

Ms. Neville: No. Indeed, that is what we have said. We are perfectly satisfied--

Mr. Ward: I thought your point was that those should be eliminated from the legislation.

Ms. Neville: Not in this proactive stage, in the term that we have suggested, but you should get that term over as quickly as possible. We have an eight-year spread even in our recommendations of how long it is going to take.

One does have to have a threshold. We wish it was 50-50, but 60-70 is better than any other jurisdiction has proposed. It is essential to treat it on a systemic basis initially. We are also aware there is no minimum incumbency requirement in the job class, so very often, fortunately, it will be one to one, and that is great. What is important to us is that is not the ultimate goal. The ultimate goal is the women in the less than 60 per cent category. As we have said--and I have not elaborated on this before--even men in those positions that are paid less than women because they are in traditionally male jobs usually do have the ability to complain.

We are talking about probably at least eight years from now. It should be the goal the legislation is working towards. However, this is a marvellous breakthrough for proaction.

Mr. Chairman: Thank you very much for your presentations to the committee.

Ms. Neville: Thank you. We appreciate the extra time you have given.

Mr. Chairman: Members of the committee, would you like to discuss the subcommittee matters now or later? It will take only about five minutes, I gather. Do you have other commitments?

Ms. Fish: I can come back early, but I understand we have a relatively early closing date. Why do we not do it this afternoon.

Mr. Chairman: All right, we can do it at the close. We should finish all the deputations this afternoon. We will resume sitting at two o'clock. We have three presentations this afternoon of a half hour each, so we will finish by 3:30 p.m.

Ms. Gigantes: Could I ask one question of information? It has been brought to my attention that the clerk's office is out of printed copies of Bill 154. How soon will more be available?

Clerk of the Committee: I will check, but I do not think we have put in a second order. Other than the bookstore, I do not know where they are available. Mr. Rae's office called me this morning wanting 35 copies. I have enough for the committee, that is all.

Ms. Gigantes: Could we ask that an order be put in?

Clerk of the Committee: I will ask.

Mr. Chairman: We will certainly make that request.

The committee recessed at 12:02 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

MONDAY, FEBRUARY 23, 1987

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Dean, G. H. (Wentworth PC) for Mr. Rowe

Ferraro, R. E. (Wellington South L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Young Women's Christian Association of Metropolitan Toronto:

Wybrow, B., President

From the University of Toronto Staff Association:

Askew, D., President

Okada, N., Chair, Personnel Policy Review Committee

Sigouin, J., Chair, Status of Women Committee

Meagher, S., Researcher

From the Freedom Party of Ontario:

Metz, R., President

Walker, L., Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, February 23, 1987

The committee resumed at 2:06 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: The first group before us this afternoon is the YMCA of Metropolitan Toronto. We have Beverley Wybrow, who is the president, and Dorothy Cameron, who is the chairman of the social action committee. According to a recent ruling delivered in London, England, I understand "chairman" is the appropriate title. It is a generic title. It covers both male and female. If you prefer to be called "chair," we can do that, but I understand that it is correct.

In any event, we would like to get on with your presentation. Can you limit your presentation to about 15 or 20 minutes? I would like to leave about 10 minutes for questions from the members, if that is possible. We welcome you to the committee and look forward to hearing your presentation.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN TORONTO

Ms. Wybrow: Thank you very much. I am Beverley Wybrow, the president. "Chairman" may be a correct term, but I would like to point out we are from the YWCA, not the YMCA.

Mr. Chairman: Oh, sorry.

Ms. Wybrow: It does make a difference. Actually, one of the reasons I point that out is that I would like to start by saying that the issue of equal pay for work of equal value is an issue that the YWCA movement has been working on for 67 years; so this is something that is of very great importance to us.

The YWCA movement represents more than six million women in 83 countries around the world. In a number of areas, we are working on this issue and have cared about it for a very long time. We believe it is a cornerstone of equality for women. The YWCA works to support the choices women make, women in the home, the work place and all spheres of life. This legislation is important for all women, whether or not they are currently employed, because we believe it is the basis of economic self-sufficiency for women.

We are going to be talking today about some amendments to the legislation that we would like to see and that we believe are very important. I would also like you to hear, on behalf of the Toronto YWCA, that we would like this legislation passed as quickly as possible for the women of this province.

There are more than 21 YWCAs and YM/YWCAs across Ontario, serving more than 50,000 women a year and their families, through a variety of programs. In 1986, the YWCA of Metropolitan Toronto served 18,000 program participants, nearly all of them women. Our programs include education, community service, recreation and the advocacy of social change. We offer several training programs to equip women with skills needed for employment.

Our original objectives, framed in 1874, were the "temporal, moral and religious welfare of young women who are dependent on their own exertions for support." Throughout our history, we have continued to provide services to women and to advocate changes in legislation, regulations and employment policies which would enable women to participate fully in the economy on an equal basis with men.

Since 1970, the YWCA of Metropolitan Toronto has developed several programs that are specifically designed to enable women to enter the work force on a more equitable basis. Our focus on change program provides basic educational upgrading, along with career planning and personal skill development to sole-support mothers with limited education and work experience. Through that program, last year we served 250 women in Metropolitan Toronto.

Our life skills pre-employment programs provide a similar life management program without the education component.

A fairly new program called working skills for women is a bridging program to enable women to enter technological skill training programs on an equal footing. Last year we served 175 women through this program. Several of our participants from that program are in the audience today to express their support.

These programs have been funded through municipal, provincial and federal sources.

I would like to reinforce that our direct work with women is the basis of our discussion with you today. It has reinforced our commitment to advocacy for changes in legislation, practices, attitudes and values which erect barriers to full participation for women in employment and in opportunities for economic self-sufficiency.

The YWCA of Metropolitan Toronto has been an active member of the Equal Pay Coalition for the past 10 years and, as such, we support the coalition's response to Bill 154. The YWCA believes Bill 154 represents a significant step forward for the women of Ontario. For all of them, it is critical that this legislation receive speedy passage. We therefore welcome the commitment of all three parties to implementing equal value legislation for both public and private sector workers.

From our direct experience with women, there are three areas of amendment in particular we wish to emphasize with you today: (1) a shorter time period for implementation of the bill; (2) coverage for all-female work places; and (3) coverage of all employees, including those in companies with fewer than 10 employees and casual workers.

In part II and part III of the bill, the proposed phasing-in time for pay equity, we believe, is too long. Even in the earliest group covered, employees in the broader public sector, first adjustments will not be paid



until two years after the legislation passes. For the last group, employees with smaller private employers, first adjustments are not paid until six years later.

In addition to this phasing in, the legislation does not limit the time required to complete the full pay adjustment. Employers may make adjustments of one per cent of their annual payroll. Therefore, employers with the largest wage gap can phase in adjustments over many years at one per cent per year, thus prolonging the economic injustice suffered by their employees.

We have an example for you of the situation of a small employer or a small public sector agency with a salary budget of about \$250,000. One per cent of that salary budget would be \$2,500. If there were 14 female employees covered by a plan, the payout would be approximately \$180 per person per year, or \$3.46 per week. If the pay inequity to be rectified is \$4,000 per employee, this process would take 22 years. A woman aged 55 when this process started, if she retired at the age of 65, would not have received even half of her adjustments.

In our programs, we do serve a number of older women who are interested in getting retraining and so on to remain viable in the work place. This example is one that is very directly relevant to the women we work with.

Pay equity should be implemented with specified target dates for full implementation in the public and private sector. For too long, the costs of pay inequities have been borne by underpaid workers--women. The continued injustice of underpaying female job classes hurts those at the lower end of the wage scale the most. Women nearing retirement are doubly penalized, because their low earnings of today determine their low pensions of tomorrow. This group deserves to catch up quickly so that their pensions will increase to reflect the wage adjustments required to achieve pay equity.

Until pay equity is achieved, women will continue to bear the burden of unfair wages. Delay hurts those women who are most disadvantaged. The YWCA therefore believes that the phasing allowed in the bill is too long and that the indeterminate period of time for wage adjustments is unacceptable.

We are therefore recommending, first, that Bill 154 be amended to ensure that payouts must be completed at the end of five years. The first year's wage adjustments should be based on one per cent of the previous year's payroll, and in subsequent years, equal adjustments to achieve equity should be made.

We are also recommending that payouts should be made earlier for key groups such as women in the lowest paying jobs in each establishment and women nearing retirement. We realize that subsection 12(3) of the bill currently talks about that to some extent, but we would like to see it amended to include, in particular, all women in the lowest paying jobs and women nearing retirement.

The second area we would like to address is coverage for all-female work places. Bill 154 currently provides no coverage for women who work in all-female establishments. It is widely recognized that persons who work in all-female work places, such as child care centres, are seriously underpaid. In spite of our current concern for the care of the elderly and children, those who devote their lives to caring for children and the elderly are often condemned to live on near-poverty wages. Almost all these people are women.

There are 16,000 people employed in child care facilities across the province, only 10 per cent of whom are in municipal facilities and therefore likely to have male comparison groups. Bill 154 as it now stands, however, will not apply to 90 per cent of child care workers who have no obvious male comparison groups.

Throughout the province, municipal child care workers have an estimated 1986 average annual salary of \$17,500. In the municipality of Metropolitan Toronto, that ranges from \$18,000 to \$20,000. This compares to the estimated average salaries of \$11,000 for employees in for-profit child care centres and \$12,000 for employees in nonprofit child care centres. Workers in for-profit centres earn one half to two thirds of what child care workers in municipal centres earn, according to the Toronto Star of February 18. Those workers most in need would not be helped by the proposed bill.

The minister responsible for women's issues (Mr. Scott) in his remarks to the Legislature, when introducing Bill 154, expressed concern for low-paid workers in all-female establishments. It is also our understanding that all three parties are sympathetic to the plight of underpaid women in all-female establishments. The Pay Equity Commission should therefore be given explicit power to compare the wages of women in all-female establishments with an appropriate male comparison group. Private child care workers' wages could legitimately be compared, for example, to those of municipal employees in the same area.

The Pay Equity Commission must be given specific power to deal with low-paid workers in all-female establishments on the same timetable as other employees. That is our recommendation in that area.

The third area we would like to address is coverage. The YWCA of Metropolitan Toronto believes that the legislation must cover all employees and employers, including full-time and part-time employees and large and small employers. This principle must be incorporated into the legislation if Ontario is to adhere to Canada's international human rights obligations. Article 2 of Convention 100, the equal remuneration convention of the International Labour Organization, ratified by Canada in 1972, requires this.

Private sector establishments of fewer than 10 employees are completely excluded from the provisions of Bill 154. With this exclusion, 12.4 per cent of women employees are deprived of the right even to make complaints under the legislation. These are often the women who for too long have borne the burden of unfair wages. In practical terms, the methodology for establishing a pay equity plan need not be too complex for smaller firms.

While subsection 7(4) of the bill attempts to give coverage for certain part-time employees, subsection 7(3) exempts casual positions from coverage. Such an exemption would deprive from coverage many of the call-in casuals who play a significant role in health care and other service industries by performing the same duties as full-time workers on a continuing but irregular basis.

The Wallace Commission of Inquiry into Part-Time Work in 1983 provided a definition which it believed could provide the basis for legislative protection for the majority of part-time workers, including casuals. That definition is, "A part-time worker is one who works less than the normally scheduled weekly or monthly hours of work established for persons doing similar work." Such a definition would provide coverage for the many part-time employees excluded by the bill.



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Seventy-two per cent of part-time workers are women and 42 per cent of the women who work do so part-time. Over half the new jobs created since 1980 have been part-time jobs. Because of the predominance of women in part-time jobs and because of the rapid growth in part-time jobs, it is crucial that the legislation not exclude any type of part-time workers, including casual workers.

We therefore recommend that employees in private sector companies with fewer than 10 employees must be able to file complaints and we suggest that they should be able to do that two years after the effective date of the legislation. As well, Bill 154 should be amended to delete the exclusion of call-in, casual employees.

As I mentioned when I began our presentation, we support the speedy passage of this legislation, because it means so much to the women of Ontario. With amendments to provide for a shorter time period for implementation, coverage for all-female work places and extended coverage for employers with fewer than 10 employees and casual employees, Bill 154 will be a significant step forward to economic self-sufficiency for underpaid women and their families.

Our recommendations, again, are based on the direct experience of many women with whom we have worked over the years and our direct knowledge of what this legislation could mean to them.

Thank you. I would be happy to answer any questions.

Ms. Gigantes: I would like to thank you for the brief. I guess what we should assume is that the other items of content in the bill that you might wish to address will be addressed in the Equal Pay Coalition's brief.

Ms. Wybrow: Yes. We are a member of the coalition and our name will be attached to the recommendations.

We chose to address the recommendations with which we felt we had the most direct experience.

Ms. Gigantes: I found your examples very helpful. I would like to ask you about the example you have used on page 3 of the 22-year period of implementation, leading to full equal pay for work of equal value. If I review the figures, it seems to me that what you have done is to assume that the gap would not be increased during the period by an increase in general annual wages on a percentage basis. If there was a three per cent annual wage increase applied to all employees each year, it could take even longer, because that would have the effect of widening the gap even further.

Ms. Wybrow: That is correct. We did not work in that factor. That would obviously lengthen the time period even longer than the 22 years.

Ms. Gigantes: The other question I would like to go to relates to your concern about employees in firms with fewer than 10 employees. If I look at what figures we have had made available to us from the Ontario women's directorate on the breakdown of the categories of employment size under Bill 154, I see that in the private sector in firms that have between 50 and 99 employees, there are 95,520 employees. This is 1985 data from Statistics



Canada. In the private sector firms employing 10 to 49 employees, there are 238,800 employees. The estimate for private sector employment in firms that employ fewer than 10 people is 238,800. When I total that up, it comes to over 500,000 women.

When we look at over 500,000 as a proportion of the total number of women who work, we are dealing obviously with something around the 25 per cent range of all women who work. Under Bill 154, if we include your recommendation that there should be coverage for firms employing fewer than 10 people, all these women would have available to them only the complaint mechanism, no equal pay plans. I asked the same question when we had a presentation earlier today from the Business and Professional Women's Clubs of Ontario. Would your experience lead you to feel it would be an intolerable burden on firms with fewer than 100 employees to develop an equal pay plan, if they were given a two-year period to get it together and to start making adjustments?

For the life of me, I do know how women who work in firms with fewer than 100 employees are going to know whether to make a complaint.

Ms. Wybrow: Obviously that is an area we thought a lot about. We do support the Equal Pay Coalition position that if a company with under 100 employees is unionized, it should perhaps be mandatory that it post a claim.

Ms. Gigantes: That is a very small proportion of those 500,000 women.

Ms. Wybrow: We realize that. We deal a great deal with women who are in nonunionized settings and we are very aware of the difference for them. Our basic concern is that at least the complaint procedure be available to all women, and from our point of view that is the more important of the two options. We would obviously like to see it mandatory for all companies to post plans. We do not think it is impossible for smaller companies. It can be a relatively simple system and as the Pay Equity Commission develops experience, it certainly will be able to advise small companies. However, we also felt we had to be realistic and our greatest concern was that every woman should have the right to a complaint.

Ms. Gigantes: If I worked in a firm that employed nine people and I had to make a complaint, I would feel pretty nervous. Would you not?

Ms. Wybrow: Yes. We do support the provision of the plan that allows for third parties to assist in that area. I should also point out that we very strongly ask that the Pay Equity Commission be given sufficient dollars to allow for education and enforcement. That is critical to the success of the whole scheme.

Ms. Gigantes: If I understand Bill 154, as written properly, about the acknowledgement of the rights of workers to seek a third-party involvement in a complaint hearing, in fact third parties would be excluded in the laying of a complaint; a complaint could be laid only by someone directly involved.

Ms. Wybrow: Yes, that is our reading of it as well. I still believe the individual can be given sufficient support from a women's group or another organization--a third party--to lay the complaint and can request to remain anonymous. They would have to lay the complaint themselves but the support from the third party would happen through the process. That is fair as long as support is available to them through a third-party process.

Ms. Gigantes: I have one other related question, and it will be my final question, Mr. Chairman; thank you for your indulgence. If we have

500,000 women in the work force for whom the complaint mechanism is the only mechanism offered under this bill, do you not think the commission is going to be crippled by complaints? In other words, I am looking at the process of creating plans in work places of whatever size as a process which may ease the load of complaints which the commission will have to deal with if women feel they are in a strong enough position to make complaints, which is another question.

Ms. Wybrow: As I said, we would obviously prefer to see smaller companies have plans. I do believe the legislation gives some incentive to the Pay Equity Commission in its public education programs and should continue to give more incentive to small businesses to develop plans. Our greatest priority, as I said, was to provide complaint coverage for every woman.

Ms. Gigantes: Thank you very much.

Mr. Chairman: We have time for a short question in response. There is about one minute left. Any other questions from the members of the committee?

Ms. Fish: I do not have a question, but I would like to thank the delegation for the brief and to say I think it has been very fair.

1430

Mr. Chairman: I would like to thank the delegation as well from the Young Women's Christian Association on behalf of the members of the committee.

Ms. Wybrow: I am somewhat touchy about that. I do get quite a bit of mail addressed the YMCA.

Mr. Chairman: My glasses were blurred. That is my excuse for today.

Ms. Fish: Oh, is that the problem?

Mr. Chairman: Yes, that is the problem. In any event, thank you for your presentation. It is much appreciated. We will take it into account the recommendations and suggestions you have made when we get further along into clause-by-clause.

The next group coming before us is from the University of Toronto Staff Association. Members of the committee, the number is 13 in your file of documents. While members of the delegation from the University of Toronto are settling in, I would like to welcome them to our committee deliberations. We look forward to hearing your presentation.

Perhaps, for purposes of Hansard, you could all introduce yourselves. I believe we have the names but we do not know the order in which you are sitting.

Mr. Askew: My name is David Askew.

Ms. Okada: Nancy Okada.

Ms. Sigouin: Jose Sigouin.

Mr. Meagher: Sean Meagher.



Mr. Chairman: Thank you very much. Whenever you are ready you can begin your presentation.

# UNIVERSITY OF TORONTO STAFF ASSOCIATION

Ms. Okada: The University of Toronto Staff Association, on behalf of the 3,500 staff members of the University of Toronto, would like to thank the committee for this opportunity to comment on Bill 154. As some two thirds of the University of Toronto's staff are women, Bill 154 will have a considerable impact on the university and all who work there.

Equal pay for work of equal value is a long-standing concern of UTSA. We are therefore pleased to see that this issue has been made a priority for the government of Ontario. However, it is important to stress that pay equity should not be allowed to deplete the already overburdened budgets of the universities in this province. Our universities have been ravaged by a decade of underfunding and cannot support a further erosion of their resources. The extension of pay equity to the broader public sector must be accompanied by an increase in operating budgets that is equal to the cost of pay equity.

While we are eager to see pay equity extended to the broader public sector, there are serious flaws in the form that pay equity takes in Bill 154. We would like to enumerate some of them.

1. There are serious difficulties with the section regarding the achievement of pay equity. Section 5 of part 1, which deals with this matter, is designed in a fashion that is neither just nor workable.

Section 5(1) calls for the "job rate" in a female job class to be made equal to the "job rate" in the male job class. Such a clause does not provide for the establishment of just compensation. Guaranteeing equal job rates does not guarantee equitable pay scales. In Bill 154, "job rate" only refers to "the highest rate of compensation for the job class." However, the starting compensation rate, the time it takes to progress from the starting rate to the job rate and the level of the interim salary rates are also factors that affect earnings. None of these factors are considered in this bill.

2. We do not support the decision to use the lowest-paid male job class as the target for pay adjustments. Bill 154 would make the salaries of female job classes equal to the lowest male job class salaries for positions of equivalent value. This clause is a resurrection of the dubious logic of Bill 105, which sought to argue that making the average woman equal to the least of men eliminates gender bias. It does not. It institutionalizes marginalization and undermines the very objective this bill was written to meet. Women's salaries should be made equal to the median male salary for positions of equivalent value. Equity means that the average woman receives the same wage as the average man. Nothing else is equitable, reasonable, just or acceptable.

The shortcomings of section 5(1) are made worse in section 5(2). If there are no male job classes that are of equivalent value to a female job class in question, the employer should not be entitled to treat the female job class as if it were equivalent to a less valuable job class. The contingent absence of a similarly valued male job class should not impinge on the entitlement of women to compensation suited to the value of their work. Many, if not most, job evaluation systems have a comprehensive compensation schedule that establishes the rate of pay for any given job value.

Such difficulties would be avoided if the bill required the establishment of a single, comprehensive compensation schedule as described



above. Such a table should set compensation for each possible job value at the median salary for male job classes of that value.

3. We wish to state our unequivocal opposition to allowing red-circling under this bill. There is absolutely no significant distinction between red-circling and salary reduction save that one occurs over a greater period of time. There is no real sense in which section 8(1) is not in direct conflict with section 7(1)(b). Section 8(1) should be struck from the bill if pay equity is ever to avoid the pitfall of achieving just compensation for women by restraining the salaries of men. This government should not be in the business of encouraging employees to pit working men against working women on issues in which their interests are mutual.

4. We believe that the definition of "bargaining agent" should be broadened to include voluntary employee associations that represent a majority of employees, have a history of collective bargaining, but are not certified under the Ontario Labour Relations Act. As a considerable proportion of the employees of Ontario's universities are organized by such associations, to eliminate them from participation in the designing and implementation of job evaluation plans is to eliminate thousands of public sector employees from having a say in their future. We see no reason to penalize these workers for electing to retain their noncertified status in the collegial environment in which they were established.

5. As an employee association in an institution with over a dozen bargaining units, UTSA wishes to strongly discourage Bill 154's restriction on comparisons across bargaining units. Such a restriction discourages a comprehensive approach to pay equity. Moreover, such a restriction is disadvantageous to women. Most female job classes are grouped into bargaining units with few male job classes and with predominantly underpaid workers. To restrict comparison outside the bargaining unit increases the likelihood that pay equity adjustments will fail to correct the undervaluing of women's work.

Lastly, such a restriction creates the need for clauses like 7(2), which allows for the disruption of equivalence due to the difference in levels of bargaining strength. Section 7(2) is an invitation to protracted litigation. Questions regarding the documentation of levels of bargaining strength, the degree of difference that is to be considered insignificant, the degree to which management intractability is to be taken into account and other concerns will emerge from this bill in endless succession. Better just to allow comparisons across bargaining units and have done with it.

6. We are profoundly concerned by the lax enforcement regulations that the government appears to be establishing. Bill 154 displays a disquieting tendency towards complaint-based models and seems to take a laissez-faire attitude towards genuine compliance.

Throughout sections 13 to 15, the bill repeatedly treats agreement between the bargaining agent and the management as compliance with the legislation. We have every hope that both parties will endeavour to hold up their ends in the effort to establish pay equity. But we must insist that no compensation policy that is not in strict compliance with both the letter and the spirit of a fair compensation law should be acceptable to the government of Ontario, regardless of the willingness of the bargaining agent or the employer to agree to it.

Similarly, section 14(8) should not treat the absence of a complaint as compliance with the legislation. Genuine compliance should be required whether

or not there is a complaint. The province does not permit such lax enforcement of tax evasion laws, employment standards regulations or parking rules. It is our feeling that pay equity is at least as important as any of these and deserves equally strong enforcement.

We strongly encourage the government to reconsider the strongly reactive tendencies of this bill and recommend that the government confer on the Pay Equity Commission of Ontario the responsibility for reviewing all pay equity policies to ensure compliance with the letter and intent of pay equity legislation.

7. Finally, it should be added that the complaint periods that have been allowed are outrageously short. Nineteen days is not long enough for nonorganized employees to review proposed pay equity policies and draft a complaint. It seems to us incongruous that employers have up to five years to develop a job evaluation system but employees have less than a month to assess such a system.

In closing, we wish to stress the urgency we feel regarding the implementation of Bill 154. Equal pay for work of equal value is long past due. We who suffered through wage restraint in 1982 and 1983 when the province was eager to save money are not now content to wait the rest of the decade for pay equity.

1440

Ms. Fish: Let me begin by thanking you for coming before us today. I think the brief is quite clear save in one area that I was not certain that I followed adequately. Item 4 said, "The definition of 'bargaining agent' should be broadened to include voluntary employee associations...." My impression of the bill is that there is not a bar to a voluntary association participating with management; rather, there is the absence of a requirement.

Ms. Okada: That is right. Exactly. Precisely.

Ms. Fish: Are you suggesting that there be a requirement?

Ms. Okada: We want to have "bargaining agent" defined more broadly as it was in the wage restraint bills, I think 179 and 111. "Bargaining agent" was broad enough to include employee associations that had a history of collective bargaining with their employer.

Ms. Fish: Okay. Your suggestion is to take the test from the inflation restraint acts?

Ms. Okada: Yes.

Ms. Gigantes: I would like to ask a follow-up question on that one. Have you had a look at the penalties sections for bargaining agents in the legislation? You might not want to be caught in that squeeze. I suggest you do take a look at it.

The second area I would like you to take a moment to spell out a bit more for us is one that has concerned me too. The bill speaks of preparing job rates and fixing up job rates, but it does not say anything about the levels under a job rate within a job class. I wonder if you could give us a bit more explanation about how you would fill this area of silence.



Mr. Meagher: I do not think it requires a great deal of explanation. I think you convert the requirement to the job, or it is to be matched to the full compensation schedule from start rate through interim rates to job rate. If there is not a direct match between start rate and interim rates, both in terms of level and in time of achievement, and job rate, then you do not have pay equity.

Ms. Gigantes: Are you suggesting we should be considering a requirement that the number of job levels be equalized?

Mr. Meagher: The number of job levels, the time it takes to achieve each job level and the rate at each job level.

Ms. Gigantes: So you go right into the categories in each job class?

Mr. Meagher: Yes.

Mr. Ward: With reference to recommendation 7, I am just trying to determine how you came up with your reference to the 19 days. Under section 14 of the bill, you have 90 days; then you have another week, and after your discussions, criticisms, negotiations, etc., with the employer, you have an additional 30 days.

Mr. Meagher: I am sorry. I did not bring my copy of the bill with me.

Ms. Okada: If I am not mistaken, "90 days" refers to the review period for which the equity plan is posted.

Mr. Ward: I think there are 90 days for a review period. That is under subsection 14(4). After the 90-day review period, the employer then has seven days to post a notice saying whether the plan has been amended, and then you get 30 days--

Ms. Okada: Yes.

Mr. Meagher: Our mistake; it is 90 days. You have a comparison of five years to three months, instead of five years to one month.

Mr. Ward: I knew that was your comeback.

Mr. Meagher: That is an improvement of almost no consequence.

Mr. Ward: We did not give the employer two years in the middle to (inaudible) with your negotiations. I just thought I would put that in.

Mr. Chairman: Are there further questions from the committee? There being none, I thank the University of Toronto delegation for bringing their views before us. We appreciate your taking the time to submit a brief as well. Do you have any closing comments that you want to make before we complete your representations before the committee?

Ms. Okada: No, other than to thank the committee very much for hearing us this afternoon.

Mr. Chairman: Thank you.

We are a touch early. I understand the next delegation is here, so we can move right on to the Freedom Party of Ontario. Would you like to come



forward? Robert Metz is the president; Lloyd Walker is the vice-president. The brief has already been circulated. It is number 14.

Gentlemen, welcome to our afternoon session. We look forward to your presentation. We have approximately half an hour for your presentation and any questions that may follow. We would like to get right on with your presentation as quickly as possible.

#### FREEDOM PARTY OF ONTARIO

Mr. Metz: My name is Robert Metz. I happen to be the Ontario president of the rather new, officially registered party in the province. I would like to begin by thanking those of you here for creating an opportunity like this for a group like us. It is particularly valuable to people like us, who hold fundamentally different viewpoints from those that happen to be politically popular at any given time.

Freedom Party is a political party that believes the purpose of a government in a free society is to protect our individual freedom of choice and not to restrict it. Our contention and our reason for being here today is to submit that the function and effect of Bill 154 is to restrict our freedom of choice and not to protect it. For that reason--I am not going to make any bones about it--I am here to totally condemn the bill and ask you to please recommend that this bill not even be given the serious consideration of our legislators.

It is not my intention to go over our whole brief. I am just going to highlight certain areas to bring them to your attention for the verbal part of this presentation, as Mr. Walker will do towards the end. I would like to address some of the fundamental premises on which Bill 154 is based, because I think sometimes we get so involved in these things that we forget what we are here to do.

From its outset, the bill begins with an unsupportable premise. The preamble reads, "Whereas it is desirable that affirmative action be taken to redress gender discrimination," and proceeds as if that statement alone were justification to create new laws designed to prohibit the voluntary conduct of free individuals in their labour relations.

That is literally what Bill 154 is designed to do. It expressly prohibits all those falling under its self-proclaimed jurisdiction from entering into voluntary labour agreements that contradict the goals of the bill. These goals, as the preamble confirms, are the consequence of a desire, not the consequence of a condition of injustice or a violation of rights or of any such nature.

The questions begging to be asked are: desirable by whom, discrimination by whom, towards whom and with what unjust effects, and supported by what objective evidence? Since when has simple desire become justification for violating individual rights and denying individual freedom of choice? How is it that the mere existence of economic inequality proves gender discrimination? None of these questions is answered by Bill 154.

As a political extension of the philosophy of equal pay for work of equal value, the bill reflects an issue that, if we are going to be honest with ourselves, is little more than a political fabrication of certain vested interests and lobby groups that have acquired undue and unearned influence with our politicians. The fact that this bill is even being seriously

considered by our legislators verifies that for them the end justifies the means, even if those means violate our individual rights and freedoms to a terrifying extent. .

We have to remember that valuing is in itself an act of discrimination. For that very reason, no government or government agency should ever be placed in a position of determining values. That would require the creation of laws that actively discriminate against selected citizens, citizens whose own taxes are going towards the payment of the government's discrimination against them.

What is even more despicable and demeaning about the nature of Bill 154 is that its provisions demand that value be placed upon a task rather than on a particular person and that all people performing that task be paid an equal amount, regardless of their relative values to the person responsible for the payment of those values; that is, the employer. In other words, equal pay laws literally prohibit us from placing value on people and insist that value be placed on work instead. What law could possibly be more demeaning and impersonal to employees than that?

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We happen to believe that people have value too. There are a lot of considerations in determining values, and I hope these things are being seriously considered by the committee. In many different ways, people have qualities that may make some of them more or less valuable to a particular employer than others, qualities that have nothing to do with the nature of the job being performed.

Punctuality, attitude, mobility, ability, intelligence, experience, physical strength, appearance, education, initiative, consistency, perserverance, dependability and loyalty are but a few of the factors involved in determining the relative value of an employee. Forcing employers to ignore or downgrade all these factors would do more to undermine the status of an employee than any other single action we can think of.

Let us face it, the process of determining a particular wage and applying it to an employee does not simply end with an employer's personal evaluation of an employee. There are many more factors and individuals involved in the ultimate determination of that wage.

An employee's wage is ultimately determined by the number of other potential employees willing to do the same work and by the demand placed on such employees by other potential employers. In turn, employers determine what they are willing to pay for certain jobs based on what their customers, the consumers, are willing to pay for the product or service they provide.

To deny any or all of these participants their choice in helping to determine these ultimate values would benefit no one, least of all the productive employees who will lose any reward for their extra efforts. Bill 154, by assigning the right of valuing to government, would replace the result of thousands upon thousands of personal value considerations with one value consideration, that of a government bureaucrat.

There is an even greater danger to laws of this nature than simply looking at the process of determining value. I am sitting here today before a committee that is ostensibly concerned with the administration of justice. I would strongly urge committee members to consider the serious social and legal consequences that accrue with the passage of social and economic legislation



like Bill 154. These consequences invariably extend far beyond the immediate goals or objectives of the legislation itself and do far more damage to the fabric of our justice system than they do towards the attainment of any so-called goals of equality.

Particularly disturbing is the realization that the act relates to its assumed discrimination, prejudices and stereotypes in a most bizarre manner. In determining what job classes are male or female, it must first legally create and define the very prejudices it seeks to abolish. This obvious contradiction of intent forces an evasion of any objective definition of what is meant by gender discrimination, so instead of offering us a definition, we are given a description of a process that must be used in the identification of such discrimination.

Simplistic in principle but complex, costly and wasteful in its bureaucratic administration, the government-prescribed process of identifying discrimination is one of simply undertaking comparisons between the wages of preselected and predefined labour groups. Strictly on the basis of such comparisons, an employer will be deemed to be guilty of practising gender discrimination and will be legally forced to bear the consequences of that discrimination. To call Bill 154 totalitarian in nature would be a gross understatement. It has no place in a free and democratic society.

Even given the assumption, as we have been, that economic discrimination on the basis of sex is a matter that must be addressed by law, how then could we possibly cater such laws to follow any principles of justice? Principles of fundamental justice would demand that, before concluding some wage discrepancy exists because of gender discrimination, those being accused of such discrimination be given a fair hearing before having their guilt declared. Justice would demand that relevant witnesses be brought forth, witnesses who are witnesses precisely because it is their wages that are under investigation, not because they happen to be members of some lobby group looking for political favours.

Evidence should be presented in a court of objective law that convinces a judge or jury beyond any reasonable doubt that a specific wage agreement was a direct consequence of gender discrimination. Only then, and not until then, would any just legal system be in a position to force a consequence upon those found guilty.

But this is not the process under which Bill 154 operates. Instead, it establishes its own definitions, sets its own criteria for evaluation and judgement, claims an arbitrary and an unsubstantiated purpose, creates legal classes of employees based on sex, assigns to itself powers that are well beyond those in accordance with the principles of a free and democratic society, claims for itself the right to determine the very nature of any disputes and issues that come before the commission and uses the threat of fines and intimidation to deal with those who choose to associate on terms not in accordance with purposes set out by the act.

Then, as if to add insult to injury, Bill 154 hypocritically forbids the use of intimidation, coercion or penalty between employer and employee that may be the consequence of its effect on their relationship. How does it accomplish this? By engaging in the very action it forbids others, by using the law to intimidate, coerce and penalize those who would negotiate their labour relationships on terms contrary to those prescribed by its objectives.

It is clear that the objective purpose of Bill 154 is to remove all



elements of choice from those directly involved in labour relations--employers, employees and their representatives--and to place the privilege of exercising such choice into the hands of government. Bill 154 represents a complete abrogation of anything that could be called justice and should never be given the serious consideration of our legislators, if justice is indeed among their priorities.

That having been said, it seems to me, in following what has transpired in this country in the nature of not only this law but many laws like it, that in some way, shape or form, we are going to have some manifestations of this kind of legislation brought into place. Whether it is the exact wording of the law as it is today or a slightly watered-down version, the principles are the same and the consequences are the same.

To elaborate a little bit on the consequences, I am going to turn this part of the presentation over to our vice-president, Lloyd Walker.

Mr. Walker: To put it bluntly, government controls, like to the road to hell, are paved with good intentions, but good intentions are not enough. They do not justify any action. No matter what good is intended, a law must be judged on its treatment of all citizens and the results of that treatment.

We have often hear the phrase, "Good in theory, bad in practice," but few of us have ever stopped to say that old bromide is wrong. Anything bad in practice is bad in theory. Pay equity as defined in Bill 154 will not be good in practice. It will hurt the very people it claims to help and that result is obvious and predictable.

Government controls placed on market forces always have had interesting effects, effects that are not always pleasant or intended. Any increase in the cost of an item will benefit only those who already possess it. Those individuals who are presently seeking that same item will only know how much they are hurt by the change in market conditions.

Pay equity will follow the same rules. Pay equity may benefit women with secure jobs, but it will harm women presently looking to break into the labour market or to change their position within it. In the same manner as a minimum wage set too high, equal pay will freeze women out of the labour market by raising the cost of hiring female employees.

Today, the reality in Ontario is that there is a large surplus of workers, both male and female, of all skills and talents, available for work. Simply stated, the supply of workers is high and the demand for them is low. In the free market, any item that was in such oversupply would naturally drop in value. Whenever supply exceeds demand, all else being equal, prices decrease. This is a reality the writers of Bill 154 have evaded, ignored or somehow failed to recognize. With Bill 154, the government expects--I do not know how--that the market will not try to even out the imbalance caused by government meddling.

When we speak of the market, what we are really talking about is the sum of the individual choices made by the people of Ontario. It is people dealing with one another, to mutual benefit, in a free environment. Just as people build shelters from any storm, they will attempt to shield themselves from the costs and consequences of Bill 154. The market, the people of this province, will not sit back and watch the choices be dictated to them by government. They will continue to make individual choices that are beneficial to their businesses, their customers, their families or themselves.

A balance will once again be achieved in the market, distorted as that market will be. That balance will be contrary to the government's intent as it attempts to create or, more accurately, legislate economic equality.

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When the government took the negotiation of value away from tenants and landlords with the good intention of providing a supply of low-cost housing, the rent control scheme succeeded in keeping rents low, but created a much larger problem: no housing for tenants. Why? You need only look at the market. Builders no longer had an incentive to build apartments, their profit. Also, tenants who could afford to buy houses had a supply of artificially low-cost housing which made it sensible to remain in rental accommodation. These effects were as predictable when rent controls were initiated as the effects of pay equity are today. People, predictably, will make choices. They will find alternatives.

For some unknown reason, the government places its will above basic economics, above the law of supply and demand, above the will of the people and then compounds its error by expecting that its wishes will not be subject to market pressures.

This is not the case. It never has been and it never will be. It was not the case with rent controls, or price controls, or wage controls and it will not work with today's topic of folly, pay equity, which honestly must be identified as sexually biased wage controls.

The only fair and equitable method of negotiating wages is between employer and employee. The government's attempt at interfering in this relationship will fail, just as any other price-fixing scheme fails; people will make choices and they will find alternatives. And there are alternatives.

The reduction of competition in the work force will increase costs and therefore prices, damaging all businesses' competitive positions. Business people and employees alike, who recognize the need for competitive pricing in today's world, may turn to the easiest alternative: they will become criminals. No, not criminals in the minds of most people--a thief, a murderer, or a thug--but a criminal only in the eyes of the government. Employees who see their livelihood in danger and business people who see their business costs making their livelihoods and those of their employees no longer feasible will become criminals, for working under mutually agreed conditions, for keeping a business in business, for keeping people working, for keeping Ontario businesses competitive in the world market and, most horribly, for earning their own living on their own terms. Such are the criminals that will be made by Bill 154.

Their crimes will be creating new job names or categories to avoid or confuse pay equity rulings, or agreements to accept lower than government dictated pay levels, or creative bookkeeping. Corruption and politics will replace ability as the basis of pay.

Is this the aim of Bill 154? It certainly will be a consequence of it.

Bill 154 will ensure the growth of that economic anomaly, present only in controlled economies, called the underground economy. People will continue to deal honestly with one another and lead their lives as normally as possible, but they will have only one thing to fear: their government, a government that will punish them for their desire to be productive rather than



unemployed, that will punish them for their initiative rather than submission to government edict, that will punish them for qualities that most would consider virtuous but that government has declared a crime.

Is this the aim of Bill 154? It certainly will be a consequence of it.

Will women's pay increase? Some will, some will not and some will decrease to zero.

I would hope no one expects that a company's wage budget will suddenly increase to take up a larger share of its total expenses. It is, however, reasonable to accept that fewer women will share a larger piece of the pie. Some women who are not in secure jobs will find themselves unemployed as their artificial wage increase makes them too expensive to keep on the payroll. One can only assume that the government's reasoning is that no pay is better than low pay.

Is this the aim of Bill 154? It certainly will be a consequence of it.

Or is it more realistic to believe that employers will reduce increases to other employees even though they may deserve a substantial raise? The beneficiaries of Bill 154 may well be taking money unearned from those who earned and deserve it. This, again, will be a consequence of Bill 154.

Will women be more fairly treated in the labour market? No. Highly qualified or talented women will find work just as they do now. No difference. But unskilled women just entering or re-entering the work force will face a totally different world, one that would not have been possible without Bill 154.

Which would you choose? Would you buy a new, untried cleanser for \$5 when you know that an available brand, a known brand, is available for the same price? You know as well as I do that the known brand will outsell the new market entry by a mile.

Using the same logic, would you hire an unskilled woman or an unskilled man if that woman or man had never left the work force and, thus, had some kind of a track record?

To make the choice easier, let us assume this couple are equal in every way, including ability, qualifications and in the rate of pay they will receive. With that in mind, we will ignore the idea that the man may ask for a wage lower than the going rate within your business. After all, you could not accept offering a woman the same low rate, because you might be violating pay equity laws.

Also, let us ignore the biological and physical differences between the two. Let us ignore the idea that women may get pregnant and leave your employ, if only for 17 weeks. Let us ignore the fact that women are less likely to work overtime, to accept transfers or to accept promotions.

Let us look at the simple fear that some time that woman, if you hire her, might invoke Bill 154 and have your business visited by a review officer who will question you, question your staff, disrupt normal business functions, seize personnel records and have you hauled before the Pay Equity Commission and tried, without benefit of judge and jury for an alleged pay equity crime.



With just that one fact in mind, how many here today would not hire the man? Is this the aim of Bill 154? It certainly will be a consequence of it.

I may be accused of being hard on women in these examples; if the truth be known, it is Bill 154 that will be hard on women. The previous observations were made solely on the basis of what would be best for any business confronted with pay equity legislation. People will choose what is best for them.

Can these consequences be avoided? Of course they can be avoided. There are two alternatives the government can choose from. The least desirable, which I hope offends you as much as it does me, would be to prevent the market from reacting to imbalances caused by government programs. This could only be done by removing a market from the picture entirely; that is to say, the government would have to take over every aspect of employee-employer relationships, and I do mean every aspect--hiring, firing, wages, promotions, etc.

All must be controlled by government, or people, in the process of living their own lives, will make their own choices. In order to control anything, that is what the government must take away. To use the words of the Canadian Charter of Rights and Freedoms, this is not justifiable in a free and democratic society and neither is implementing controls piecemeal with bits of legislation like Bill 154.

The only acceptable method of setting wages in a democratic country is to allow the free market to operate. If any person, male or female, negotiates a wage suitable to his or her individual requirements, whose business is it? Who has the right to say that the agreement is unfair, when both employee and employer are satisfied? The only equality that matters is that all people, regardless of gender, have the same freedom to negotiate for wages they personally find acceptable. Their choices about what to accept or whether to accept will be as individual as those people themselves.

Bill 154 cannot accomplish its own goals, let alone recognize the hopes, aspirations and economic realities of every individual in Ontario. Only a free market can accomplish this.

Freedom Party believes the purpose of government is to protect our freedom of choice, not to restrict it. Bill 154 serves only to restrict the choices available to everyone in Ontario and, as such, is bad in theory and worse in practice. With that in mind, this committee should recommend that Bill 154 be dropped and the government return to its proper function and protect the freedom of choice of all of us. That is the equitable thing to do.

Mr. Chairman: Thank you for your presentation. Perhaps I could start off with the questions. I have only one. With the basic thrust of the brief you have put before us, I gather that a form of pay equity, primarily the establishment of minimum wage in this and other provinces and other jurisdictions many years ago, is something you would also not support. Is that correct?

Mr. Metz: You are absolutely correct, because we do not believe in legislating unemployment. If you have a minimum wage of \$6 an hour, people who are in a market worth \$5.50 an hour are legislated out of work.

I know of many instances of people who cook the books so that people can work. They are people who do not have to deal with minimum wages and do not

have to fear their own government. It looks all nice and legal to the government, but they are not working the number of hours that are being reported. That is a private deal that any employee and any employer can make, and no government could ever be in a position to find that out. As long as the paperwork is filled out, it is going to look very nice, clean and aboveboard. This is going on. This is part of the underground economy we are talking about. Let us not fool ourselves by denying that it exists.

If we are going to be a free society for much longer, we had better consider the consequences of what we are doing these days. We are looking at a justice system. What happens when the average citizen starts to realize he is going to be treated the same by his government, whether he commits a serious crime such as theft, rape or robbery or whether he fails to pay someone in accordance with a certain government-prescribed amount; whether he opens his store on Sunday or whether he is a doctor who wants to charge his patients. None of these controls works, and we are seeing evidence of it every day in the newspapers. I cannot understand a government putting itself in a position of going headlong into action that has proven consistently time and time again that it does not work.

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Mr. Chairman: I gather that, with respect to my initial question about minimum wage laws, you would not agree with the premise that there are some elements of exploitation in the work force, where a worker may be subjected to the power of a particular employer who can subject that employee to a level of income which is considered to be less than acceptable. In other words, the employee, being in a position which is less firm or not as strong as the employer's position, may well be forced into a situation where he has to accept something. In your particular example, you are saying that is going on in the underground economy now. I am suggesting to you that, as I understand it, government has to protect the liberty of individuals and has the responsibility to protect those who are not able to protect themselves in some instances.

By extension, if you do not accept the philosophy that there are exploiters out there or people who would take advantage of those who are weaker in our system, then obviously you cannot accept the philosophy upon which Bill 154 is based, because minimum wage is perhaps a lot less controversial than Bill 154.

Mr. Metz: I accept the philosophy of a government protecting its citizens. I do not accept the premise of your definitions. Coercion exists between an employer and an employee only when one or the other is using an explicit threat of force, not when they are using mutually agreed-to situations and terms they have both agreed upon. Unless an employer is holding a gun to an employee's head and forcing him to come into that building to work for him, how can it possibly objectively be said that coercion or force is being used in that relationship?

Mr. Chairman: I am going to go to Mr. Polsinelli, but I want to make one comment. I think all of us on this committee are aware of circumstances where child labour has been exploited, where females have been exploited in so-called sweat shops, where all kinds of circumstances that are totally unacceptable in today's society have been looked upon by all three of our parties as being totally unacceptable to us. The question is, where do we evolve to from here? That is what Bill 154 is all about.



It does cause me some concern that you do not see any need under any circumstances, however extreme, for government to protect those who are in a weakened position or who are unable to protect themselves.

Mr. Metz: Your implication is that all those people in the sweat shops and in the circumstances you describe were forced there through some coercive or illegal method. You are saying they were not there by choice, that they did not make an agreement with their employer, that somehow someone came up to them and forced them into that situation.

If any individual in this room decides to work for another individual for even the ridiculously low rate of \$1 an hour, how does that make it anyone else's business? We are not in a situation to predetermine what a person needs for himself and what situation he would like to have in terms of his own priorities. It gets very dangerous when government begins to set priorities for its citizens and individuals within its society.

Mr. Polsinelli: I would like to thank you for presenting the other point of view. I have two or three very short questions. I would first like to ask whether or not you believe in equal pay for equal work.

Mr. Metz: If you define the terms, yes. Who will be doing the defining? If I am the person doing the valuing, then it becomes a moot point, does it not?

Mr. Polsinelli: Let me give you an example. A woman and a man are sitting side by side on an assembly line and are doing exactly the same work. Would it be proper for the employer to pay the woman less than the man?

Mr. Metz: Yes, it would be proper.

Mr. Polsinelli: Secondly, are you familiar with any other jurisdictions that have implemented equal pay for equal value legislation?

Mr. Metz: Just vaguely.

Mr. Polsinelli: Are you aware it has been federal law in Canada for, I believe, the last seven years?

Mr. Metz: Yes.

Mr. Polsinelli: Are you aware no one has died from that legislation yet?

Mr. Metz: No one has died from a lot of the legislation that even exists in the Soviet Union, but that does not mean the Soviet Union would be a preferred country to live in.

Mr. Polsinelli: This is my last and final question. Are there any ties between the Freedom Party of Ontario and the National Citizens' Coalition Inc.?

Mr. Metz: None in a formal way whatsoever.

Mr. Polsinelli: Thank you.



Mr. Stevenson: Government can get involved in the operations of business directly or indirectly in a great many ways. One way is through various tax incentives, special tax write-offs, protection from competition from similar businesses in other jurisdictions through tariff and nontariff barriers and so on. Do you support that sort of government involvement in business?

Mr. Walker: Absolutely not.

Mr. Stevenson: Let me use a particular example such as the European Community where there is substantial subsidization of several industries. Would you suggest that other governments such as Canada, the United States and Australia step totally aside and allow those policies to hit our countries on a free and open market?

Mr. Walker: I would say to you if the European Community wants to subsidize something it is sending to us, we should say: "Thank you very much. We appreciate the fact that all those people in Europe want to give us things cheaper." Our consumers would love the idea of having things subsidized by other countries. When those countries finally catch on to the idea that all they are doing is paying us to buy something, they will change their ways. You cannot run an economy giving away money for ever.

Mr. Stevenson: Thank you.

Mr. Chairman: There being no further questions, I would like to thank you for your submissions before us. As Mr. Polsinelli said, it does present a different view point from that which we have heard up to this point, and we appreciate hearing views from all sides of the spectrum. That is what our democracy is all about. Thank you very much.

Mr. Metz: Once again, thank you for the opportunity to do so.

Mr. Chairman: Members of the committee are all welcome to stay if they like. We do not have another submission before us, but we do have some scheduling situations with respect to some groups. We can adjourn first and then go on to deal with that informally. I do not think we have to have this in Hansard.

The committee adjourned at 3:22 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

TUESDAY, FEBRUARY 24, 1987

Morning Sitting



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Dean, G. H. (Wentworth PC) for Mr. Rowe  
Ferraro, R. E. (Wellington South L) for Mr. Knight  
Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Confederation of Canadian Unions:

Lang, J. B., Secretary-Treasurer  
Ritchie, L., First Vice-President; Executive Vice-President, Canadian Textile and Chemical Union  
Harte, C.; President, York University Staff Association

From the Canadian Organization of Small Business Inc.:

Hale, G., Vice-President

From the Reformed Christian Business and Professional Association:

Kersten, A., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 24, 1987

The committee met at 10:07 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Resuming consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning, members of the committee. I recognize a quorum, so we can get under way with our hearings for today's session.

I would like to welcome the Confederation of Canadian Unions, which is going to be appearing before us for our first representation. John Lang is here to lead off the presentation. I welcome you and your delegation. Perhaps you will introduce your guests for purposes of letting the other members of the committee know whom you have brought with you.

CONFEDERATION OF CANADIAN UNIONS

Mr. Lang: Three of us will be making a presentation jointly. To my left is Celia Harte, president of the York University Staff Association. To her left is Laurell Ritchie, first vice-president of the Confederation of Canadian Unions and vice-president of the Canadian Textile and Chemical Union.

The Confederation of Canadian Unions has 10,000 members in Ontario, in nine unions. Our membership here constitutes a representative cross-section of the labour force of the province. Our brief is short. We will read it and highlight some of the points as we go along.

The Confederation of Canadian Unions is committed to securing legislation that enacts the principle of equal pay for work of equal value in the laws governing work place relations throughout Canada. While in general we commend this legislative initiative, we want to make very clear to the members of this committee that Bill 154 does not provide equal pay for work of equal value protection to Ontario workers. In our opinion, Bill 154 does not live up to the commitments the Ontario government has made in agreeing, with other provinces and the federal government, to the International Labour Organization Convention 100, to "ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value."

Nowhere in Bill 154 is there a mention of equal pay for work of equal value. We feel that the equal value standard must be clearly stated in the bill and that the failure to comply with the standard be held to be an unfair labour practice. We also maintain that in enacting this legislation, the Legislature must also amend the Employment Standards Act, part IX, equal pay for equal work; otherwise we will have two conflicting standards governing workers in the province.

The Confederation of Canadian Unions feels that those who drafted Bill 154 do not have a clear enough understanding of real-life work place situations. In our presentation today, we want to apply the bill in its

current form to actual conditions in bargaining units that we represent so that this committee will see that a number of amendments are absolutely essential if Bill 154 has any chance of eliminating the wage discrimination that women workers suffer in the work place.

Ms. Ritchie: I will pick up here. This is on the question of gender predominance.

In our view, there is no rationale for the numerical cutoffs of 60 per cent for a female job class and 70 per cent for a male job class. This notion has been imported from the United States and bears no significance to the work force in Ontario. Indeed, if a figure were to be used--and we are not supporting that--why would not 45 per cent female job class suffice, since women now make up almost 45 per cent of the work force in Ontario?

The CCU believes the bill as it is currently drafted will likely encourage manipulation and will significantly reduce the number of women who could possibly benefit from the legislation.

A pertinent illustration of this problem can be seen among the workers in a knitting mill that a CCU affiliate represents. The knitters in these mills continue to be almost exclusively women and, in our view, are undervalued. The position of machine helper has historically been filled by males. It is the entry position into the mechanics stream and although it requires few skills, it is paid at a higher rate than knitter.

During the past few years, with the encouragement of the union, women have begun to use their seniority to enter the position of machine helper, although none has progressed to the position of mechanic. The result is, however, that at the present time it would not be possible to establish a 70 per cent male predominance in the machine-helper job class. The fact remains that the higher rate for that job is the result of its being historically filled by male incumbents.

The comparison between a knitter and a machine helper is one that should be allowed and would be necessary if the pay discrimination against women in knitting mills was to be reduced. In our view, the reference to "historical incumbency" in subsection 1(4) in Bill 154 is too general and we feel specific protection against this relatively common occurrence must be contained within the bill.

A similar situation is evident when one analyses the composition of the York University Staff Association which represents over 1,000 office, clerical, technical and library workers at York University. Eighty per cent of this bargaining unit is female.

The most easily recognized male job group within the YUSA bargaining unit would encompass computer operators, programmers and analysts--grades CS 4-8 inclusive. However, the current composition of this group is 18 female and 47 male; that is, 72 per cent male. If only two male employees in this group were replaced by women, it would be difficult to establish this as a male job class that could be used as a basis for comparison.

We hope you will appreciate that the temptation for management to manipulate ratios such as these will be overwhelming. As trade unionists, we do not want to spend our time arguing about whether a job class is composed of 69 per cent men or 70 per cent men or trying to block the jockeying of our members in and out of job classes that will inevitably follow if the bill is



passed in its present form. We believe a more flexible approach is needed to identify jobs that are undervalued because they are women's work.

We would recommend that the legislation be redrafted, eliminating the present definitions of male and female job classes and replacing them with a section that would give guidance for the determination of a job class, considering such factors as the number of current incumbents, with reference to the fact that women comprise 45 per cent of Ontario's work force as well as the historical incumbency of the position, sex stereotypes in the general labour force, etc. We also feel that in the complaint procedure that is in the later phases of the bill's plan any worker should be able to complain about unequal pay regardless of the numbers of workers in the job classes.

Celia is going to deal with another York University Staff Association situation.

Ms. Harte: This addresses mostly across-bargaining-unit comparison. The use or example of computer series employees illustrates another glaring weakness of the bill. There must be no restrictions on making comparisons across bargaining units if this legislation is to have its desired effect. The union or the employees where no union exists should be able to choose the target group for comparison. If the bill were enacted in its present form, we could realistically envisage, if the computer series was removed, being left with technicians' jobs as the only male job classes in the bargaining unit with which to attempt comparisons. Job comparisons with these specialized positions would be the most difficult to establish. In our union those are jobs like craftsmen and draftspersons--all male.

The most obvious examples of pay discrimination at York University are illustrated by comparisons across bargaining units. For example, York has currently posted a job vacancy for a bilingual secretary who must be a high school graduate, type 55 to 60 words per minute and be able to operate a word processor. The applicant must have excellent oral and written communications skills in both English and French, plus the ability to work independently and to work well under pressure. The person must be able to deal courteously and effectively with students, faculty and the public. The applicant must have one to two years' experience and be able to accept working conditions that include overtime work, moving between Glendon and the Keele Street campus, and constant interruptions during the work day. The job was originally assessed by the university as a grade 3, but after protests from the union it was posted as a grade 4 and is now paid at the rate of \$10.94 an hour.

In the Canadian Union of Public Employees bargaining unit, which comprises maintenance and caretaking workers, a driver who operates a van and sometimes a tractor must have a class F licence, speak and read English and is responsible for transporting people and materials on and off campus. That position is paid \$11.43 an hour.

It is therefore obvious that it is in comparing workers in traditionally female jobs and traditionally male jobs that the clearest examples of pay discrimination exist. If the law is to accomplish anything, it must facilitate comparisons between such groupings. It is the workers and their unions who are in the best position to identify the most suitable comparisons. Workers will still be required to prove their case but they should not be hindered by having to make comparisons to oblique situations when other direct comparisons are available.

Needless to say, we are not suggesting that a van driver in the

maintenance department at York is overpaid, but simply that work traditionally performed by women is underpaid.

Pursuing this same example unveils another situation that the drafters of the bill have not appeared to contemplate: male workers who have jobs in predominantly female bargaining units or work places are also underpaid in comparison to the same jobs in predominantly male bargaining units. The job of a grade 4 postal clerk in our bargaining unit in YUSA is to drive a van. He has almost identical job functions to those of the CUPE driver, although the requirements for the YUSA position also stipulate grade 12 education and one year's experience. The YUSA driver is paid \$10.94 an hour, 40 cents or 4.5 per cent less than the CUPE driver.

Another interesting anomaly is that the lowest-paid category in the YUSA bargaining unit is predominantly male. There are 15 males and two females employed at the grade 2 level. The men are mostly shipper-receivers in the bookstores and libraries who load and unload shipments and enter the information in computers for inventory control. They are paid \$9.78 an hour. But in the predominantly male maintenance bargaining unit, the basic labourer's rate is \$10.59 an hour, a differential of 8.3 per cent.

Although we recognize that throughout society women have borne the overwhelming burden of pay discrimination, it is also true that some men have suffered as well, particularly in situations where they are part of a predominantly female work force. The legislation must recognize this fact and allow them a remedy as well. We note that the International Labour Organization Convention 100, to which we referred earlier, speaks of "equal remuneration for men and women workers." We believe that this bill must be redrafted to provide a remedy to those male workers who are suffering discrimination.

Ms. Ritchie: I will just read the concluding pages.

The Confederation of Canadian Unions strongly objects to the provision that when an adjustment to women's wages is to be made it will be made with the lowest comparable male rate. This is not fair. Ontario's legislation must follow the same pattern already established in the laws of the federal and Quebec governments where adjustments are made on the basis of the highest comparable male rate.

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We also wish to raise our concerns about the implementation of this legislation in work places where piecework is in effect, and that is in a good number of work places in this province. We maintain that the comparison between male and female job classes must be made in the base rates where workers are operating at normal speed and effort. They must not be made on the basis of the total compensation of a pieceworker where the rate is achieved by an employee working like a horse, often arriving early and working through breaks and lunch periods in order to achieve higher piecework earnings.

We can understand the intent of subsection 12(9) in requiring that a pay equity plan approved under the act prevail over all relevant collective agreements. We certainly do not think a union should have the right to negate adjustments made under this bill through collective bargaining. However, we think the law should be viewed as the minimum standards that are to be achieved in Ontario. The bill should state that employers and unions are free to bargain for standards which are an improvement over provincial legislation.



Our final point is that the minimum pay adjustment of one per cent per year, specified in section 12, must be derived from a source separate from general wage increases. This must be spelled out in the legislation. If this is not done, employers can simply use those funds set aside for general wage increases, thereby lowering the increases available for all workers. This would violate the well-established principle expressed in subsection 8(1) that discrimination cannot be eliminated by reducing the pay of current employees. In the case of universities and other institutions in the broader public sector, we believe that the funds for providing adjustments must come as special grants from the province.

We also feel that adjustments must be completed within a five-year period. As it stands, the bill is not fair in that it requires those women who have suffered the most severe discrimination to wait the longest before they receive equal pay.

The Confederation of Canadian Unions believes there is widespread agreement within our society that the historic undervaluing of the work women perform must be corrected. We recognize that this will cost money, but costs cannot be the justification for continued discrimination. Although the present government of Ontario and the opposition political parties have all made statements in support of ending this wage discrimination, action has been slow and painful. Our concern is that in its present form, Bill 154 applies to the smallest possible number of women workers in the smallest possible way. Such an approach will not satisfy working women today.

As a founding member and active participant in the Equal Pay Coalition, the Confederation of Canadian Unions endorses and supports the more comprehensive brief that the coalition has prepared on Bill 154. It has concentrated on three points that are of particular concern to us:

1. The need for a more flexible approach in identifying jobs requiring adjustments. We oppose the numerical determination of sex predominance.
2. The need to allow for unrestricted comparisons across bargaining units.
3. The need to include as a basic standard in the bill the principle of equal remuneration for men and women workers for work of equal value, as adopted by the International Labour Organization in 1951 and ratified by Canada and its provinces in 1972. We urge the committee to consider these suggestions carefully and to make amendments to Bill 154 as recommended.

Mr. Chairman: Thank you. Is there further comment or can we move on to questioning?

Ms. Caplan: You raised two points and I want to clarify whether I understood the points you were making. On page 5, in the third paragraph you state, "Pursing this same example unveils another situation that the drafters of the bill have not appeared to contemplate; male workers who have jobs in predominantly female bargaining units or work places are also underpaid in comparison to the same jobs in predominantly male bargaining units."

On page 6 you state, "We note that the ILO Convention 100 speaks of 'equal remuneration for men and women workers.'" Just above that, you talk, about situations where men have suffered as well, where they are part of a predominantly female work force. The bill does take that into recognition. Any



man who is working in a female-predominant category would receive the same remedy as women. Although this bill is an affirmative action component under the Charter of Rights, it allows that. That is the reason we have identified predominance of 60 per cent of women. The other 40 per cent being men in the female-predominant category would receive the same remedy as the women.

I think it is very important to understand that any man working in a job category that is identified as predominantly female is entitled to the same remedy as women are. I wanted to point that out because I do not think your brief is clear on it.

Ms. Harte: The question arises, how does one define the job class? In the case of the shipper-receivers who are grade 2, they are a predominantly male category within the context of a predominantly female bargaining unit. I do not think the legislation is at all clear that those people would be able to receive any remedy at all because they are shipper-receivers, which cannot be argued as traditionally women's work. Depending on how one defines the job classes, they could end up being totally excluded from the present legislation.

Ms. Caplan: We have heard arguments before that rather than using the predominant figure of 60 per cent to identify female-predominant jobs and 70 per cent to identify male-predominant jobs, perhaps we should talk about historical women's work. We chose to use the predominant figures of 60 and 70 and, as you are aware, Manitoba is using 70 and 70 to identify what is a female-predominant job, what is a male-predominant job.

The point I am making is that within the identification of those job predominances it is not based just on the historical women's work and men's work, but on the gender of who does the work. Any man working in a job which is considered under the definition of the legislation as female-predominant would be entitled to the same remedy as women in that category.

Within the bargaining unit or within the establishment, what will happen is there will be identification of the pockets of gender predominance and that is how gender discrimination will be identified. This is not a remedy. This bill does not remedy the issue of low wages. It deals specifically with gender discrimination. I want to point out that it does not deal with the issue of low wages. It deals specifically with gender discrimination. Any man who is working in a female-predominant group which has been identified is entitled to the same remedy as the women in that group.

Ms. Ritchie: I think a couple of things need to be pointed out. As Celia Harte has stated, the problem arises in the definition of what is the job grouping that is to be used for comparison. The problem with the whole issue of gender predominance is that the figures of 60 and 70 per cent for female and male job groups respectively are quite arbitrary. The whole notion of gender predominance arose out of a case within the public sector in Minnesota, where there was a judgement that addressed the particular situation, namely, a judgement that the figure of 60 per cent, I believe, would cover virtually all of the situations that should be addressed in providing pay equity or equal pay.

In Manitoba, the figure was not pulled out of the air. There were studies done prior to the implementation and the working out of that legislation that again demonstrated that the 60 per cent, or whatever figures were examined, would provide virtually all of the women in the public service with some of upgrading.

We submit there have been absolutely no studies that demonstrate any relevance for the 60 per cent, 55 per cent, 65 per cent or whatever number is pulled out there. No studies demonstrate that this number applies in Ontario, certainly not in the private sector or, I submit as well, in the broader public sector. No studies demonstrate that those are going to hit at the vast majority of women workers. We have a lot of situations where women will be struggling at 55 per cent, etc., to have some kind of coverage under this law.

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Mr. Chairman: Can I break in? We are going to have a serious time problem, because I have a long list of additional questions. I know you are into a matter of some importance, but with respect, do you have a quick supplementary?

Ms. Caplan: There is only one other point, which is that this legislation does allow for some flexibility in the negotiations around that 60 per cent figure. Sixty per cent is what is mandated, but it does allow for flexibility to be shown if there are other cases that can be considered by the Pay Equity Commission of Ontario.

Mr. Dean: On page 6, you were discussing the matter of lowest comparable/highest comparable wage rate. Maybe you can explain to me, since I am not quite familiar with this, why there would be more than one comparable wage rate.

Ms. Ritchie: Let us take a female job which a union and its members are examining. They feel there should be some upgrading taking place and look for a comparable male occupation where there could be equal pay for work of equal value established. There may be three jobs performed by men that a comparison can be made with and there may be varying rates for those three male jobs.

Mr. Dean: Does that not reflect something, though, about the previous negotiations, if we are talking about a union, or if there is no union, the previous agreement between employer and employees as to what those three male jobs are worth? If the people thought they were worth the same, they would have negotiated the same rate in the past, would they not? Apparently they are not of the same worth in the views of those who negotiated it, the employer and employees.

Ms. Ritchie: We are saying if one applies skill, effort, responsibility and working conditions in some kind of assessment of jobs, inevitably there is going to be more than one comparable in some situations.

Mr. Dean: Assuming that happens, why would it not be equally desirable and a heck of a lot less argument to say an average of the comparables?

Ms. Ritchie: Our position is that it should be going to the highest rate. In the federal experience, while generally they have pursued the highest rate, I do know in some of the settlements of those cases the approach you are referring to now is one that has been taken in reaching some kind of settlement.

Mr. Dean: I would like to see this as reasonable as possible and not somebody's staking out position A, somebody else saying "nuts" and staking out

position B and then they argue it back and forth. You are benefiting the lawyers more than anybody else by doing that. Just think about that.

Mr. Chairman: I would like to get Ms. Gigantes on and we are running over. Is it a pressing, urgent point? I am sure it is from the look in your eye.

Ms. Caplan: It seems to me that if there are several male jobs of equal value which have different pay scales or job rates, there is some reason other than gender discrimination that those jobs are so different. The determination in the drafting of the legislation was that women should be paid at least equal to a job of the male rate, and that if there were several jobs, then there was some reason other than gender discrimination for those job rates.

Ms. Ritchie: I agree with you totally. One of the reasons could be racism, namely, that some of the lower-paid male jobs are the result of the incumbents of those jobs being ethnic or immigrant workers. There are explanations like that too.

Ms. Caplan: Could it be bargaining strength?

Ms. Ritchie: It could be bargaining strength.

Ms. Gigantes: I hope Mr. Dean will bring forward some examples of where there has been an agreement between an employer and employees who are not organized. I have never seen one.

I would like to go to page 3 and your example of the difficulty you see with the 60 per cent-70 per cent at York University and the fact that the incumbency of two positions, a switch from male to female in two positions, would mean there would be no job comparison under this legislation. I would like to refer you to the definition of "job predominance"--what is it called in this bill?--which allows for the flexibility Ms. Caplan referred to where we can work out historical incumbency and all that jazz.

Mr. Lang: I think it is subsection 1(4), page 10.

Ms. Gigantes: Good. I would like you to apply that to clause 13(3)(b), where your flexibility occurs. I would like you to tell us what is going to happen at York University when your staff association goes and says: "Under the definition, we have a right to apply clause 13(3)(b). We are going to argue that this previously male-dominated job class should still be called a male job class. We are going to argue that we want a job comparison because of the historical incumbency."

Tell me how far you are going to get under clause 13(3)(b). I want you to win that case. Are you going to be able to do it? You have all this flexibility Ms. Caplan talks about; let us see you flex.

Ms. Harte: I do not believe the flexibility is there. Even before you get to the question of whether two people get changed in a computer series, there will be an argument over whether the first two levels of that series, which are data entry operators, will have to be included. If they are included, we do not have a 70 per cent male category.



Ms. Gigantes: Let us suppose they are not included. That makes a situation one you can win under clause 13(3)(b). Right? Are you going to be able to win it? .

Mr. Lang: I think you are pointing to the difficulty. These are fairly rigid classifications. I would say you are going to be spending a lot of time arguing over these precise things. I am very doubtful you would win it. I guess the point is that if you follow through the procedures of this legislation, you can see that you are going to run in to a lot of these very practical problems.

Here is a bargaining unit of 1,000 organized workers, 80 per cent women. This is where you look for traditional job gender discrimination. If you follow within this bill, the thrust of the bill is to make the comparisons within the bargaining unit. The most obvious one is computer series, where there are a bunch of men together. Even under the bill, you are going to be right on the knife edge on whether you are going to get to that threshold before the bill is enacted. If that group is knocked out, then you are making comparisons with tool and die makers. Theoretically, you can go in through that process, but that is not going to help most women.

The basic point is that you do not need a microscope to go looking for an elephant. The examples are right there staring everybody in the face. They are the ones we have pointed out, but they are cross-bargaining unit comparisons. Why put any obstacles in the way of making those comparisons? They are the ones that make sense; they are the ones where you can see the historic gender discrimination most clearly; and they are the ones the union, employees and management should be sitting down and talking about, not making these oblique comparisons which the bill is pushing people into.

Mr. Chairman: I think the argument has been well made. Ms. Gigantes, I am going to have to defer to the minister's representative, Mr. Ward, who is the parliamentary assistant to the Attorney General. I will give you an opportunity for a brief comment, and then we are going to have to move on to the next delegation. I say that with regret, but we have had a fairly significant time on this major point.

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Mr. Ward: I want to thank the delegation for an excellent brief. Unfortunately, I want to reopen the same argument, the whole basis of the job class definitions. I suppose that if it were strictly a complaint-based system that was being dealt with, you would not need to establish those thresholds or whatever. It is important to note that not only do you have a remedy through collective bargaining in the situations that you bring to our attention, but beyond that, the legislation also makes provision for a review officer of the commission to make a determination.

I do not think that some of these problems were totally unanticipated. I believe that to the extent that it could be done within a proactive framework, there is a remedy there for those situations.

Ms. Ritchie: I think we are going to be spending a tremendous amount of time--bureaucrats' time, tribunal time and commission time--dealing with all these exceptions. What we are saying is that flexibility should be there in the initial instance. It should not be a question of trying to deal with

historical predominance and general sex stereotyping within the labour force and going to the commission with those as examples of exceptions.

Mr. Ward: Without those thresholds I do not see what you achieve, other than moving towards a completely complaint-based system that is going to involve more bureaucratic wrangling and more intercession than what we have now.

Ms. Ritchie: This will not be the position of the CCU, but why not 45 per cent if you are going to deal with numbers? I have not heard any rationale for 60 per cent. I have heard none whatsoever. I have heard it for the public service bill, Bill 105. I have heard the rationale there, because the studies have been done. We see no rationale for anything other than something in the order of 45 per cent.

There is a complaint phase within the legislation, and we do not see any opening up of the gender predominance issue when we reach the complaint phase. You said yourself there may be some rationale there, but we do not see that you can complain about anything other than the propriety of the pay equity plans, which contain within them those gender predominance figures.

Mr. Ward: I do believe that in terms of the male job class and female job class definitions the remedy is there through a review officer above and beyond those definitions.

Mr. Chairman: I want to break in at this point and thank the delegation. I am sorry we do not have time to expand a little further on the subject. Your presentation was an interesting one. I appreciate your time and thank you for appearing before us this morning.

The next delegation is the Canadian Organization of Small Business, represented by Geoffrey Hale. I saw Mr. Hale here earlier. I do not know whether he is still in the audience, but if he would come forward, we would appreciate his taking his place here.

Mr. Dean: This would be an appropriate time for me to raise a small point of order that arose out of yesterday's hearings.

Mr. Chairman: Sure, you may while Mr. Hale is coming from wherever he is at the moment. I did see him here.

Mr. Dean: I wonder whether we have a response from Mr. Ward or anybody else from the government about our request for the release of heretofore secret studies on this issue from many government departments.

Mr. Ward: The studies that were referred to in yesterday's communication from, I believe, the Canadian Federation of Independent Business are being assessed in the context of the freedom of information policies. I think there were some items referred to that just do not exist, such as additional recommendations or reports from some of the consultation panels. Any documentation that was available was released.

On the second point, I think some of those legal opinions are clearly recognized by most thinking people to be solicitor-client matters. Whether the ministries involved would want to waive that privilege to release those would have to be determined as well. All the documents are being assessed, and we hope to report back to you as quickly as possible this week.



Mr. Dean: How soon this week? The sooner the better.

Ms. Gigantes: Were no tapes made when the consultation panel reported verbally to the minister?

Mr. Ward: I was not there. I cannot tell you.

Ms. Gigantes: I wonder if you would look into it for us.

Mr. Ward: I would be happy to look into it.

Ms. Gigantes: Freedom of information covers tape recordings too. Why do you not check that out for us?

Mr. Ward: We have a higher level of trust within our caucus than you do, obviously. We do not tape all of our conversations.

Mr. Dean: Mr. Chairman, can we leave in Mr. Ward's conscientious and competent hands to bring it as soon as possible?

Mr. Chairman: Since you put it so nicely, I do not see how Mr. Ward could refuse, when you talk about competent hands.

Mr. Ward: ASAP.

Mr. Chairman: He will pursue the matter with vigour and tenacity. I would like to get on with the next delegation. Let me welcome on behalf of the committee Geoffrey Hale, who has appeared on occasion before other committees of the Legislative Assembly. We welcome you again, Mr. Hale, and look forward to your presentation. Whenever you are comfortably seated there you can begin with what you have to say to us.

#### CANADIAN ORGANIZATION OF SMALL BUSINESS

Mr. Hale: Thank you very much, Mr. Chairman. The Canadian Organization of Small Business appreciates your taking the time today to hear our comments, concerns and specific recommendations on the subject of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

I wish I could say it was a pleasure to be speaking with you today. However, given the contents of this legislation, we believe this legislation is a clear example of why legislative committees are necessary. If you want to use that as a plug in dealing with the matters on compensation that were raised in the Globe and Mail this morning, you are more than welcome. While we recognize many of the laudable objectives of many members who voted for Bill 154 in principle on second reading, we believe this legislation in its present form is fundamentally destructive of the principles of equity in employment, even if it seeks to promote a forum of equity.

The legislation is fundamentally flawed in several areas. First, it largely ignores the basic causes of wage disparities between men and women, attempting to shift the burden of correcting these disparities on to employers, when even the government's own research shows that the vast majority of causes of disparity lie elsewhere.

Second, the legislation is designed in such a way that it makes it extremely difficult for the 90-plus per cent of small businesses that are part



of the jurisdiction of this legislation. I should clarify that. Ninety per cent of the businesses that are under this legislation ultimately are small businesses. It prejudices the interest of fairness that should be the basis of good employment law and good employment practice in any well-designed law, particularly dealing with employment.

Third, the legislation virtually ignores the distinctiveness and the realities of the almost 100,000 small businesses that would be covered by this legislation.

What do we mean by fair employment legislation, good employment legislation? We believe the following six principles illustrate the approach that governments and Legislatures should take when they are dealing with large numbers of businesses most of which do not have formal personnel processes and for most of which formal personnel processes simply are not functional or appropriate.

The law should be compliance oriented as opposed to enforcement oriented. The law should be fair and seen to be fair to both employers and employees. The law should be based on good employment practices that are functional to businesses of different sizes. The law should be applied consistently to businesses of similar sizes, in similar or comparable market situations. The law should be simple and understandable enough to permit voluntary compliance in the vast majority of businesses, without requiring either the average employee or the average employer to resort to expensive professional assistance.

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I miss the smiling face of the gentleman from Hamilton East this morning because I was looking forward to telling him that the legislation which he so frequently brings forward for your consideration is a model of clarity, consistency and simplicity compared with this legislation we are considering today.

The law should permit the fast, simple and equitable adjudication of disputes by a qualified, neutral and nonlegalistic service.

Finally, no Ontarians, whether employees or employers, should be victimized for exercising their rights under the law. We believe Bill 154 undermines these principles. We believe it is designed in such a way that several aspects of this legislation would probably be found unconstitutional were they subject to a court challenge. We believe that rather than promoting greater equity in employment and compensation, particularly in the small business sector, they will lead to needless disruption, needless conflict and countless perceptions of unfairness, both in the process and in the results.

The presentation we are making to you today in writing covers a number of the alternatives which we believe would be worthy of your consideration as members of this Legislature in actually addressing the root causes of employment disparities, including the matter of improving educational standards and opportunities, increasing personal and family choice in child care services and improving the skills training and career advancement opportunities open to women from all backgrounds.

We believe there are a great many things that could be done and should be done in order to promote greater equality of opportunity. However, while we can get into this in greater detail, should you so wish, we would rather

address the basic details of this legislation, their implications for fair and equitable compensation practices in small businesses, which would be the majority of businesses covered by this legislation, and give you 11 specific recommendations for amendments to this legislation.

First, let me say that in designing a law that will cover close to 100,000 small businesses in due time, we would have hoped that the government would have designed a system which was far more functional or more applicable in the small business environment than it actually is.

In small businesses, individual employees frequently come to define and redesign their jobs to reflect personal strengths and talents. This contrasts with the highly-structured personnel environment in which compensation is defined solely with regard to pre-established job requirements, as in many large, unionized organizations and many areas of government. We believe it would be totally inappropriate to set up a commission which, in effect, seeks to impose civil service values on a small business environment with which these people have little or no familiarity and in which these approaches to personnel management and fair compensation practices have little relevance.

To give you an example of that, as a member of the Nielsen task force on program and spending review, I had the opportunity to review in considerable detail the federal government's approach to personnel in compensation issues. I am assured by public servants in Ontario that there are far more similarities than differences in the federal and provincial situations.

The federal government has five times as many personnel bureaucrats as medium- and large-sized companies in the private sector. Those officials take between five and six times as long to fill the average job. That works out to a productivity factor between three and four per cent for a group that makes up almost one in five civil servants in not all ministries but some ministries, and one in 10 across the bulk of the federal government.

God help us all if we attempt to impose that level of inefficiency on the private sector and, frankly, on municipalities, school boards and other broader public institutions or the broader public service in the name of equity, because bureaucracy so often does not promote equity. It promotes the very reverse. Perhaps that is the reason you have and will have so many public service unions tripping in here on Bill 105 and Bill 154 complaining to you about inequities in compensation practices, both in the public and private sector, and that the supposedly sophisticated, scientific compensation management systems employed at such expense and at such an investment of time and management effort, both in the public and the private sector, are themselves highly subjective and take great wisdom to design in such a way to satisfy everybody.

In recent years, many large, entrepreneurially managed organizations have sought to break down traditional personnel stereotypes by redesigning the work place and increasing reliance on productivity, performance, merit bonuses and other measures aimed at enhancing the importance of the individual within the organization. We believe that legislation targeted on job descriptions, as opposed to the individuals who do them, is fundamentally flawed.

Should you have any questions later on, we can go into the aspects of the small business work place and how it applies to this legislation. We will now look at specific recommendations.

Our first major recommendation concerns the definition of pay equity in



section 4 and its implications for good and fair personnel management practices in the private sector.

The present legislation defines the basis for equity as a composite of four factors: skill, effort, responsibility and working conditions. These factors are four important criteria of value. However, they are far from the only significant factors that should be considered in determining the basis for an appropriate evaluation of dissimilar positions within the private sector.

The Canadian Organization of Small Business submits that these four factors alone are insufficient to determine value in those companies, particularly in small businesses where the performance of the individual is such a large part of both the job description and the compensation system.

While the compensation systems are in place in the private sector, whether they are relatively simple and informal, as in most small businesses, or highly technical and complex, as in most large businesses, they reflect a balance of technical, industry and market factors. This is an experience which is not readily acquired by a government tribunal which has to rely on judicial or quasi-judicial precedence.

Furthermore, you are working out of the many factors which lend themselves to the interpretation of that. They are not furthered by the kind of adversarial evaluation process proposed by most advocates of pay equity.

The concept of pay equity in the private sector is deeply flawed and perhaps even meaningless. Without provision for the availability of skilled labour, productivity and individual merit are primary criteria for determining value.

COSB recognizes that the government is prepared to admit some of these factors as secondary criteria; in other words, a defence against baseless accusations of discrimination. However, we believe it is fundamentally unfair and inappropriate that any Ontarians be subject to the idea that they are guilty and they have to prove their innocence before any government agency in order to avoid whopping penalties in law and in a financial sense.

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We believe this reverse onus, this burden of proof on the employer, is neither justified by the relevant research nor is it justified based on the constitutional guarantees of natural justice in the Charter of Rights and Freedoms. For that reason, we are recommending that all persons charged with an offence under the law should be considered innocent until it is firmly established that their compensation practices are discriminatory. This can be done by amending section 4 of the act to include the following as basic criteria of discrimination: individual performance evaluations, productivity and the availability of skilled labour.

For the average small business, it would be a travesty of justice to expect it to come down with the kind of merit evaluation system that would be required to stand up in a court of law under reverse onus. The employer is not going to shortchange employees knowingly. Skilled, capable, hard-working, dedicated employees are a resource. You invest enormous amounts of time and money as a small business employer--your time, not some personnel consultant's--to train those people. You want them to hang around if they are a valuable part of your team. You are not going to shortchange them. To say



that the merit system in employment should be subjected to some arbitrary civil service criteria, frankly, we believe is an offence against basic principles of justice.

The second recommendation has to do with compensation for false, frivolous or malicious accusations. The present legislation, I believe it is subsection 22(2), provides that a review officer may decide not to consider a complaint if it is outside the jurisdiction of the commission or if it "is trivial, frivolous, vexatious or made in bad faith."

However, if a business is subject to substantial financial penalties under the legislation, or even if the costs of determining whether that business is guilty or innocent can be imposed by a review officer by demanding the creation of a pay equity plan that meets the criteria of the commission, it is reasonable that if there is no finding of guilt, no finding of discrimination, the business be compensated in full or in part, depending on the degree of negligence of the commission in bringing the case in the first place.

There are some people who say this would promote abuses, but let us look at the precedents where this has actually been tried.

The Income Tax Act: Revenue Canada used to go on regular fishing expeditions to blackmail taxpayers into compliance with tax laws or what they believed to be compliance with tax laws. Comparing this legislation with the Income Tax Act is not a bad comparison, because they are both about as intelligible to the average taxpayer, whether employer or employee.

If somebody is working on what he believes to be a fair and reasonable system and somebody has a grievance against him, whether legitimate or not, and that grievance does not stand up under the legislation, why should that business be subjected to costs of \$25,000, \$30,000, \$40,000 or even \$50,000 to get the commission off its back when it is not guilty of any offence?

That may not seem much to you folks; after all, you dispose of billions of dollars of taxpayers' money every month, some of you with a greater degree of relish than others. However, for the small business that does not have the taxpayer contributing to its wellbeing by placing orders or by compelling orders, that \$20,000 or \$30,000 or \$40,000 is money that could have been spent on training its employees to be more productive. It is money that could have been spent on improving the productivity, making those jobs more competitive or bringing in more business so the business can hire more employees.

To say that somebody can be draped over a barrel to answer some frivolous, malicious or otherwise unjustified charge is, again, a travesty of justice.

Not only the Income Tax Act makes provision for this form of compensation at the discretion of a judge or other impartial arbitrator, but also the Ontario Human Rights Code has similar provisions for compensation in cases not only of false, frivolous or malicious accusations, but also of financial hardship.

I understand this is a provision that is not frequently exercised. However, I also understand that following the debates on Bill 7 in 1981, which some of you may remember, the commission took considerable steps to ensure that false, frivolous or malicious complaints, where people are hiding behind the law to get even with an employer for some fancied slight, are not

considered nearly as readily as they were in the past. That kind of check and balance in legislation to prevent abuses of legislative power is something we commend to you to ensure that the legislation is used for the purposes for which it is intended and not as an instrument for some individual to settle scores while hiding behind the law.

We mentioned the productive use and the relevance of the kinds of systems that are proposed in this legislation for small companies. If a company is accused of an offence under the legislation, it will have to prepare a pay equity claim, should a review officer so decide. This is not an exemption, as is sometimes suggested by advocates of the legislation; it is more a club hanging in the closet waiting for somebody to use it at some future date.

Frankly, even if there is a six-year or seven-year deferral for the application of this section, we do not believe we should wait six or seven years to correct visible flaws.

If the provisions of this legislation are not considered applicable to companies with fewer employees, for example, where formalized evaluation systems are not relevant; where job descriptions are so flexible that they change depending on the amount of business walking in the door; where somebody is on sick or pregnancy leave; where the business brings in a new product line, or any of the other factors that contribute to the volatility of job descriptions and job evaluations in very small businesses, if these factors are legitimate and apply to companies with fewer than 10 employees, as we believe they do and they should, we believe every single one of those criteria also applies to companies with fewer than 20 employees.

For that reason, we recommend that the committee amend the legislation to exempt all companies with fewer than 20 employees from the legislation; and, furthermore, that a simplified dispute resolution system administered by the employment standards branch of the Ministry of Labour be set up to deal with disputes for small and medium-sized companies covered by the legislation, based on the model of the small claims court.

Why the employment standards branch? Very simply, we do not believe any government commission which is designed primarily to deal with pay equity disputes in governments and large corporations, as it inevitably will be according to the terms of this legislation, has either the competence or the ability to deal with compensation disputes in the totally different environment of the small and medium-sized business.

Furthermore, we have an agency in place in the employment standards branch, whatever the level of appreciation we have for it as employers or that certain employees may have for it, which has the competence and the background in dealing with large numbers of businesses. It has jurisdiction right now over several hundred thousand businesses under the Employment Standards Act in Ontario.

Rather than setting up a whole new bureaucracy, to which we would have to give on-the-job training in the realities of small business--we do not really like giving on-the-job training to civil servants--it would be far more appropriate to deal with that through the instrumentalities of the employment standards branch.

Mr. Chairman: I apologize for interjecting at this point, but could you get to the summation of your argument, so we can get on to some questions?



I realize you have a lengthy brief and a number of points you wish to make, but we are going to have a serious time problem shortly, for which I apologize. With those few words of advice, I am sure you will govern yourself accordingly.

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Mr. Hale: All right. I will skim through the rest of the recommendations without giving you the detailed justifications for them, Mr. Chairman, and I hope we can handle some of them during the question and answer period.

The Canadian Organization of Small Business believes the application of pay equity legislation should not be retroactive in the sense that increased compensation payable to individuals or groups whose work has been undervalued in the past should apply only from the date of settlement of any complaint and not from the date of the legislation's passage.

The reason for that is very simple. The complex and inherently arbitrary character of any job evaluation system whose imposition depends on a constantly changing set of rules makes it very difficult for the small business to know when it is in compliance with the law and when it is not. For that reason, inasmuch as the law may change or the hearings period, even if we do have a simplified and streamlined system, we believe this should not be applied retroactively.

Our seventh recommendation is that subsection 1(4), which permits male and female job classes to be defined on the basis of historical incumbency, gender stereotypes and such other criteria as may be prescribed by the regulators--

Ms. Gigantes: By the regulations.

Mr. Hale: By the regulations, I am sorry.

We believe that section is totally inconsistent with the proclaimed objectives of this legislation for advancing economic opportunities for women. Rather than enhancing those opportunities and encouraging progressive employers to recruit, train and promote qualified women for nontraditional employment, subsection 1(4) effectively reinforces sex stereotypes and penalizes employers, particularly in small business, for implementing informal affirmative action plans. If we are trying to isolate women in traditional job ghettos, I know of no better way to do it.

Our eighth recommendation 8 is that section 7 be amended to include differences of bargaining strength as an allowable exception under the act. We find it ironic that subsection 7(2) provides for "differences in compensation between a female job class and a male job class if the employer is able to show the difference is the result of differences in bargaining strength," after the commission's approval of a pay equity plan, but not before.

It would seem that if differential bargaining power is an excuse for wage differentials after the commission has held a hearing, then consistency under the legislation would suggest that it cuts both ways. I know of many unionized employees who would probably agree with us there. After all, what is the collective bargaining system for?

COSB recommends the deletion of subsection 32(4), providing for



anonymous complaints to the Pay Equity Commission of Ontario. Frankly, employees already enjoy protection against possible employer reprisals under Bill 154. Allowing anonymous complaints would encourage disgruntled individuals to make false, malicious or frivolous complaints, which would result in substantial waste in both employer and government resources. As legislators, you should not be encouraging people to hide behind the law in order to settle personal scores or grievances. We recommend that you delete this as totally inconsistent with the traditional Canadian concepts of justice and fairness.

We also recommend that section 29 be amended to provide for appeals of Pay Equity Commission decisions to the courts. I doubt that many small business owners will resort to the courts to appeal decisions made by the Pay Equity Commission or the employment standards branch if you accept their recommendations. However, we feel if this provision is good enough for the Canadian Human Rights Commission and good enough for the Ontario Human Rights Commission, there is no reason we should expect a lesser standard of justice from the Pay Equity Commission.

We also recommend that section 33 be amended to require that the commission review officers be subject to constitutional requirements governing search and seizure, and that any records taken from a business for the purposes of making copies or extracts be returned within a maximum of five business days. We note the law provides for the constitutional guarantees of individual dwellings in the case of the requirement of search warrants for search and seizure. We find no reasonable grounds for saying that if a business person keeps his or records at home, they should be protected under Canada's Constitution, but if they keep those records at the business they should not have similar protection. We recommend this to your attention.

We understand your committee has already passed a resolution requesting full access to the pay equity studies performed by the government. We commend you for your prompt action in dealing with that situation. However, if you are not in a position to deal with our recommendations regarding what we believe to be unconstitutional aspects of Bill 154, we recommend that you urge the government as part of your report to refer Bill 154 to the Supreme Court of Canada for a ruling on its constitutionality prior to its proclamation in law. If you do not do this, I have every confidence someone else will and that we will not resolve the disputes surrounding this legislation nearly as quickly as would otherwise be the case.

Thank you for time and attention. We would be pleased to entertain any questions you may have at this time.

Mr. Chairman: Thank you very much, Mr. Hale. Because we ran over with the last group I am allowing a little additional time for Mr. Hale, in that we started late. I would like to limit the questions and the answers to about 10 minutes which, I appreciate, does not give nearly enough time. We have another group waiting to be heard, so I will start with Ms. Gigantes and then Mr. Stevenson.

Mr. Hale: I gather that is not 10 minutes an answer, Mr. Chairman?

Ms. Gigantes: I would like to thank you for your brief, very clearly put. There is one point I could raise before a question. I think if you look at your recommendation 13 on section 32(4), in your reference there you should also look at part IV of the bill, section 21(1), because I think you will find that it is not quite the way you put it.

May I ask you where your organization fits in the establishment size categories that the bill lays out?

Mr. Hale: That is a fair question. About two per cent of our members would have more than 100 employees. About 40 per cent of our members would have between 10 and 100 employees, although I suspect a certain number of them hope to fit into that category at some future time, and about 50 per cent would have under 10.

Ms. Gigantes: So 50 per cent would be exempted already under the bill?

Mr. Hale: Yes.

Ms. Gigantes: What you are asking for is an exemption that would include all those up to 20 employees?

Mr. Hale: That is correct.

Ms. Gigantes: My understanding is that would constitute about 40 per cent of the women who work in the private sector in Ontario.

Mr. Hale: We address that issue very simply. Small businesses are not wage setters; they are wage takers. In other words, they look at the standards which are set in their industry and their community and they decide to pay at that standard, at a percentage above that standard or a percentage below that standard, depending on the difficulties they are having finding skilled, qualified and competent employees to do the jobs they want done.

Ms. Gigantes: I just wanted to compare your recommendation with the number of females who would be affected by that recommendation in terms of our work force. You indicate that certainly by far the large majority of your membership would have establishments with fewer than 100 employees.

Mr. Hale: That is correct.

Ms. Gigantes: You also talked about the requirement to have small employers develop equal pay plans. You are aware that this bill says there is no need for equal pay plans for any private employer with fewer than 100 employees?

Mr. Hale: With respect, I think that is a red herring because, while you are not required to prepare a proactive plan, if a review officer comes into your business in response to a complaint which, under the present writing of the law, may be an anonymous complaint--

Ms. Gigantes: No, I think you have to look at section 21(1). That is why I raised that in the first instance.

Mr. Hale: Okay. Dealing with the actual matter of preparing the plan, the review officer can ask the employer to justify his wage practices and if the officer so chooses, prepare a plan and send the employer the bill. If that is the case and, presuming even that the plan shows that the employer is being fair, bear in mind that such things as individual merit are up to the judgement of the person who is writing the plan and not the employer. Their perception of individual merit may vary; their perception of productivity may vary; and their perception of the availability of skilled help may vary, because the law provides for temporary skill shortages. We all know certain

jobs are in virtually endemic skill shortages. That is why there are so many women tool and die makers coming into the marketplace these days.

As a matter of fact, the reason our chairman, Mrs. Gritt Koehl, cannot be with us today is that she is busy training a new batch of tool and die makers from Durham College of Applied Arts and Technology, two-thirds of them women, because the big companies in her industry keep raiding instead of training.

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We believe the provisions that are there subject the average small business to considerable administrative disruptions that have nothing to do with equity. For that reason, additional checks and balances are needed in this legislation.

Ms. Gigantes: Frankly, I will give you my opinion and I am sure you are not pleased to receive it, but I think this bill fits your concerns very closely. I am not happy about it because I think it does not fit the concerns of women who are employed in large numbers in this province in the private sector in firms of the size represented by your membership.

Mr. Hale: I can tell you a number of our members with 20, 30 or 40 employees who would be covered by this legislation even under our proposals, have attempted to set up sophisticated personnel systems for their businesses to see if there is some justification for changing the way they pay employees. They found that both men and women in their businesses have found it disruptive and more difficult to deal with than the existing informal systems.

The personal element in employer/employee relations, which is so noticeably lacking in governments and many large corporations, is something with which we have an advantage in the small business sector. If the law would, in effect, minimize or denigrate that, we feel it is not a step forward for women or for any Ontarian.

Ms. Gigantes: Could you give us a description of the claim you think that might be made under the Charter of Rights, under your recommendation 16, on behalf of your membership?

Mr. Hale: Of the executive summary?

Ms. Gigantes: Yes.

Mr. Hale: First, on the assumption of guilt, we do not feel the assumption of guilt is justified under subsection 15(2) providing for affirmative action programs. We do not believe this legislation, either in its causes or in its application, can be justified on that basis. The assumption of guilt is fundamentally a denial of natural justice.

Ms. Gigantes: Do you think that being asked to set up a plan, which would not affect most of your membership, is an assumption of guilt?

Mr. Hale: We believe the exclusion of the most basic criteria of compensation from section 4 is in itself an assumption of guilt on the part of most employers.

Second, yes, putting together a plan which is subject to the revision or scrapping of a government commission is an assumption of guilt. Furthermore,



we believe there is a fundamental conflict of interest with regard to the Pay Equity Commission. It combines the function of partisan advocate, prosecutor and judge. We do not believe that is an appropriate combination of responsibilities in any agency. The people who are responsible for prosecution and advocacy should be separated from the people who are making the decisions.

I recognize some people in the legal community believe you can do that by setting up a Chinese wall, as the saying goes in the securities business, and having the commission appoint a tribunal, which they then pay. We do not believe that amounts to independence and we do not believe the kind of people who would be appointed to that commission would be independent and impartial, even with the provisions for tripartite--

Ms. Gigantes: Then you would have a basic objection to the Ontario Labour Relations Act and its workings?

Mr. Hale: If we had tried to apply the rules of the Ontario Labour Relations Act to 100,000 nonunionized businesses, you are darn right.

Ms. Gigantes: And if it is supposed to apply to all businesses and all employment practices in Ontario?

Mr. Hale: There is a huge difference between, say, the provisions of the Employment Standards Act and the provisions of this legislation.

Ms. Gigantes: I am talking about the Ontario Labour Relations Act.

Mr. Hale: One of the things we keep hearing is that those of us who oppose this legislation are no different from the people who did not oppose slavery in the 19th century, who opposed child labour laws, the Earl of Shaftesbury, or those who oppose the minimum wage.

Frankly, with respect, I think that is hogwash, because the matter of employment standards legislation as we have it today is relatively cut and dried. You know whether somebody is 18 years of age and has to be paid an adult wage or whether he is under 18. You know whether you are paying somebody the minimum wage of \$4.35.

Ms. Gigantes: I was not talking about the Employment Standards Act. I was asking you about the Ontario Labour Relations Act.

Mr. Chairman: I am going to ask that we move on to another questioner because there are many other who have questions and Ms. Gigantes has taken most of the time already.

Ms. Gigantes: Thank you.

Mr. Chairman: I know you are in midflight on that response, Mr. Hale.

Mr. Hale: We could have gone on that for quite a while, Mr. Chairman, so that is up to you.

Mr. Chairman: I fully appreciate that. If the two of you would like to carry on in the hallway after, you are more than welcome to do so. I made a commitment to Mr. Ferraro, whom I cut off in the last series, and although I indicated that Mr. Stevenson would be next, I have to use the prerogative of the chairman and defer to Mr. Ferraro, to whom I made the first commitment. Then I will move to Mr. Stevenson.

Mr. Ferraro: Thank you, Mr. Chairman. I appreciate your ruling in that regard and sympathize with Mr. Stevenson.

Mr. Hale, thank you for your forceful presentation. I must submit that I have heard most of it before.

Mr. Hale: We appreciate your openness to it.

Mr. Ferraro: That is no problem. I am open to almost everything. I must also say in the same breath, by way of brief comment, that your somewhat overemphatic dramatization of what I conceive to be the reality of the procedures is understood from your perspective. Being a politician, I have been known to overemphasize certain issues myself, but I am not sure it is the reality.

Having said that, I will get to the one question I want to ask.

Mr. Hale: Perception is reality, Mr. Ferraro.

Mr. Ferraro: I suspect it depends on who is perceiving, Mr. Hale.

Mr. Hale: That is the heart of the question. Please go on.

Mr. Ferraro: Fair enough. Yesterday the Ontario Federation of Labour and the Business and Professional Women's Clubs of Ontario were in, and I posed essentially the same question to them in anticipation of their response, and I will do the same to you so that the record may indicate that it was asked specifically.

The assertion is made in the legislation and indeed by many proponents, yourself included, that small business is distinctively different from large business. The whole issue of pay equity cannot be argued from a moral standpoint, I do not believe; but from an economic and logical point of view, I suspect many argue that small business cannot adapt to the same degree to the proposed legislation as large business.

I know this seems very simple to you in response, but when I asked these associations yesterday, they indicated that there should be no exceptions whatsoever, that it should apply to every business in Ontario and that small business could adapt easier to the proposed legislation. I suspect you have some sympathy in the committee. I just want you to react in that regard.

Mr. Hale: I do not know that the Ontario Federation of Labour is terribly qualified to comment on small business, and I am certainly not qualified to comment on the way it runs its affairs. However, we believe there is a huge difference between the way the average small business runs and the way resources are devoted to the people management process in small business and the way the large organizations are run. Frankly, I would apply that to the broader public sector--the small municipality and the mythical, tiny township. It is the small establishment as well as the small business.

We could enumerate the differences at great length, but let me summarize. First, there is no formal personnel process. The owner or owners are the personnel process. They do everything--hire, train, attempt to evaluate fairly and replace as necessary--instead of having the kind of personnel bureaucracy I described earlier. That is a huge difference, because it means you have to do things quickly, informally and flexibly.

The second major difference is that there is no highly structured job evaluation system. You can be asked to do virtually any job in a business if your customers all beat a path to your door at the same time or if you have one person on sick leave and another person on maternity leave. So the idea of rigid job evaluations is utterly irrelevant to small business. It is people that matter as people--not as men or as women, but as people.

Third, there is the question of the change in the business. I was in a number of businesses last summer when I was out visiting members. You do constituency work; so do I. I was amazed to see the number of businesses that were not in the same business they were in five years ago. They may have the same employees, they may have some of the same employees with new people, but in many cases they fish for the business that is out there. In the case of one fellow, if that means starting with a swimming pool repair business and ending up sandblasting for expressways, that is what you do. The idea of a rigid job evaluation system where you run the risk of a complaint every time you change the nature of the work performed in the work place is ludicrous.

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The first question was the distinction. The second question was the idea of the exception. Functionally, we believe the law is not applicable under 20. One could argue for a higher figure. I am sure there will be other associations that will argue for a higher figure. However, even with a 20-employee floor, the vast majority of businesses covered by this legislation will be small businesses. Therefore, we believe the legislation should be designed in such a way as to cover the majority of businesses and establishments and not designed in such a way that it applies primarily to large corporations. That is bad law.

The federal government has a study it did for the Income Tax Act which, I understand, has been applied by some people to other areas of regulations. It shows that a small company, to conform with the various paperwork and regulatory compliance requirements, will spend proportionally three to six times as much as a large corporation to do the very same things. While I recognize that certain people would contend that this is a piece of human rights legislation and that economic factors are not relevant, we appreciate and agree with the fact that if a law is going to make sense, if it is going to be applied and if it is going to be obeyed, it has to make sense to the people who are being asked to obey it.

Mr. Chairman: Mr. Ferraro, I am going to have to move on to Mr. Stevenson. I know you have additional questions--

Mr. Ferraro: No, that was it.

Mr. Chairman: --but I am trying to give everyone an opportunity. I would ask the questioners to be relatively constrained and the response, Mr. Hale, to be as constrained as you have shown an amazing propensity for during this entire debate.

Mr. Hale: They have been good questions, Mr. Chairman.

Mr. Chairman: We will go to Mr. Stevenson. Then I have Mr. Ward, and then we will have to move on. We are running very late.

Mr. Stevenson: Briefly, could you clarify your statement? Did I understand you to say that you would like to see the process under this act



located in the Employment Standards Act for all businesses or just for small business? I understood you to say for small business. Was that correct?

Mr. Hale: I cannot speak for large corporations, so I would not presume to say that the law must be administered through the employment standards system for large corporations. I can see a rationale for separating the administrative procedures for the public sector and for the private sector. I believe that would be a very positive thing because, as I noted earlier, the private sector work place is a totally different kettle of fish compared with the public sector work place, even with recognitions that the small municipality and the small business, for example, have a lot in common.

I think there is a good argument to be made for having the employment standards people deal with all private sector employers. However, if you cannot handle that as a committee, we believe it definitely should be applied to the small business employer. I suspect the constitutional lawyers among us would prefer a neat solution with private sector employments under one jurisdiction and public sector employers under a separate jurisdiction on the grounds that this is the way other employment matters are handled in this province. There are arguments on both sides, but probably the stronger arguments are for separating public and private sector enforcement and administration.

Mr. Chairman: Mr. Ward, a brief question if you would.

Mr. Ward: The biggest concern I have with regard to your presentation is that you make references to the definitions under section 4, I believe, in terms of establishing pay equity, but you seem to have ignored the exemptions under section 7 in your presentation.

Mr. Hale: We have not, for the very simple reason that the difference between sections 4 and 7 is where the entire question of assumption of guilt hangs.

Mr. Ward: Where is the assumption of guilt?

Mr. Hale: If you have to justify a merit procedure to the satisfaction of a civil servant in order to be judged innocent of discrimination, that is a very big difference for a small business from requiring the civil servant to prove that your merit practices are discriminatory. I know you are not a lawyer, but I am sure your distinguished colleague the Attorney General (Mr. Scott) has dealt with that in his civil liberties days.

We believe there is a fundamental difference from the employer having the burden of proof, where they have to trot up all sorts of statistics and materials to the satisfaction of the commission and the court, and a civil servant being required to prove that certain merit compensation practices are deliberately discriminatory or even a consequence of discrimination between men and women.

Mr. Ward: But surely, even under this legislation, there is as much onus on complainants to make their case as there is for somebody to defend it. The system we have here is primarily a self-managed approach. For many small businesses, there is a complaint-based mechanism in there. I do not see that it is any more onerous on the small businessman than it is on the complainant.

Mr. Hale: First of all, that depends on the approach and the philosophy and the management in the review system. There is a huge difference

between government inspectors where you have a compliance-based piece of legislation, such as the Occupational Health and Safety Act, and an enforcement-based piece of legislation, such as the Human Rights Code. To give you a basic example, the inspector or the review officer goes in on a compliance basis to assist the business owner to comply with the legislation.

Mr. Ward: As he does under this legislation.

Mr. Hale: That is hypothetical. My experience is that single-issue agencies tend to develop a life of their own, certainly in looking at the approach certain human rights commissions have taken--not the Ontario Human Rights Commission; I will give you credit for that much.

Employers are often treated as class enemies. The review officer gets out on the wrong side of the bed in the morning, or if there is a personality conflict between the employer and the review officer, as is frequently the case, particularly if the review officer does not go through the courtesies in coming into the business, you can get off on totally the wrong foot and then it can become a witchhunt.

I do not think that is what you want to happen. However, I think the iron law of bureaucracy suggests that is what happens in the absence of an appropriate set of legislative checks and balances.

Mr. Chairman: Thank you very much, Mr. Hale. As you can see, we could have gone on at some length.

Mr. Hale: All day.

Mr. Chairman: Your presentation was quite interesting, and obviously, a great deal of work has been put into it. On behalf of the committee, we thank you for your time and that of your organization and appreciate your appearing before us this morning.

Mr. Hale: Thank you for your time and your excellent questions.

Ms. Fish: Can I ask about a few things?

Mr. Chairman: Yes.

Ms. Fish: The first is on the questioning. It might be helpful if a concerted effort were made generally to ask questions rather than to engage in argument with the deputants. We have seen this morning with the Confederation of Canadian Unions, I think it was, a tendency to engage in argument, in some cases, a bit more than questioning. It might simply assist us all in moving through the deputations if we confine it to questions.

The second thing I would like to raise is the matter of smoking in the committee. In the last round of hearings on a bill, in consideration of allergies both in the case of staff and in the case of committee members, this committee very kindly agreed not to have smoking in the committee room but instead to accord a mid-morning break.

I suffer from a rather bad smoke allergy. In the last two days, I have been relying extensively on medication to the point where I simply cannot deal with the amount of smoking that occurs in this room. I know there are staff, who cannot leave the room the way a member can, who suffer from smoke allergies and are in a very difficult position. I would like to ask again that



members please not smoke in the course of committee and that if it is necessary, perhaps at the hourly mark there could be a five-minute break.

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Mr. Dean: I certainly would like to support Ms. Fish on that. I do not think I have an allergy, except that it makes me sick.

Mr. Chairman: I would like to get the next deputation on, if we could.

Could I call forward the Reformed Christian Business and Professional Association, Arend Kersten, executive director? We welcome you, sir, with apologies for the lateness of your coming before us. We have difficulty staying on time on occasion, as you have probably noticed, but we look forward to your presentation. Whenever you are comfortably seated, you can indicate what it is you want to share with us.

#### REFORMED CHRISTIAN BUSINESS AND PROFESSIONAL ASSOCIATION

Mr. Kersten: My name is Arend Kersten and I am executive director of the RCBPA. We were here last week making a presentation on extended store hours. Since that time, I have been battling a losing struggle with bronchitis. I sincerely hope my voice will hold out as we share with you our thoughts and comments.

At the outset, we want to say that we had a study done by a number of our members regarding Bill 154. They made a very close, clause-by-clause study. We struggled with whether we should come with very precise and detailed input regarding the details of the bill. However, we decided to share our concerns with you in very broad terms. Our committee is preparing some more detailed material and it will be forwarding that to you in a written form at a later date. At the same time, in characteristically Dutch-Canadian style, we are not going to play any word games. We are committed to working within the framework of the 30 minutes you have allotted us and we are pleased to be here.

We want to express our genuine appreciation to this legislative committee for allowing us the opportunity to participate in the democratic process and sharing with you our views regarding Bill 154.

The Reformed Christian Business and Professional Association seeks to serve and represent some 3,000 Reformed Christian, self-employed business people and professionals throughout Ontario. In addition to our provincial organization, we are structured into 13 local chapters. Most of our members are first-generation and second-generation immigrants of Dutch extraction who belong to the family of reformed Christian churches--Christian Reformed, Canadian Reformed, Free Reformed, Reformed Church of America and the Netherlands Reformed--and who, committed to the lordship of Jesus Christ over all of life, seek to address the challenge of integrating faith and vocation.

As our name suggests, we are committed to the highest ideals of biblical love and justice, and the RCBPA wants to formally go on record as sharing the government's commitment to the biblical injunction "to do justice and to love mercy." We commend the government's determination to address an area where it believes there is injustice and inequity.

Nevertheless, after very careful study and review, we have some serious questions and reservations about Bill 154, and we welcome this opportunity to



share them with you in an atmosphere of frankness, honesty and respect.

1. Aside from the Liberal-New Democratic Party marriage contract, the current campaign to implement pay equity as detailed in Bill 154 was preceded by the 1986 green paper on pay equity. Both Bill 154 and the green paper use as a foundational premise the assertion that widespread and deliberate wage discrimination based on gender is a reality in Ontario. To prove this assertion, the green paper uses as its authority Judge Rosalie Abella's 1984 Equality in Employment: A Royal Commission Report.

We submit that the conclusions Judge Abella, well known for her pro-feminist views, reached most certainly required a significant degree of subjective analysis. Her conclusions have not been universally accepted and we wonder whether Ontario would not be better served if more time was made available for additional review, study, analysis and possible critique of the conclusions she reached.

2. Frequently, statements are made, particularly, it seems to us, by politicians and members of the media that pay equity is necessary because women's salaries, on average, are about 65 per cent of men's salaries. These statements are, at best, misleading. The green paper, while repeatedly referring to a wage gap of 38 per cent, admits on page 10 that only approximately a five per cent shortfall is due to wage discrimination. We submit that the alleged inequities Bill 154 seeks to correct are not as widespread as many think or claim.

3. We remain to be convinced that there is a need for new legislation. Are the provisions of the Ontario Human Rights Code and the Employment Standards Act not sufficient to address alleged wage discrimination in the work place based on gender?

4. We object to the insinuation that business is the root cause of all our economic problems. While undoubtedly there may be some instances where justice and mercy are not the norm, we resent the blanket condemnation spirit surrounding the issue of pay equity that suggests all businesses exercise regular, deliberate and systematic--the word it uses is "systemic"--discrimination based on gender. This adversarial relationship between government and labour on the one hand and business on the other serves nobody's best interests.

If we can compact our concerns we do so in point 5.

5. In spite of extensive research and study, we have not yet discovered a system or procedure that completely eliminates all vestiges of subjectivity when it comes to determining what constitutes jobs of equal value. Bill 154 does not provide such a formula either. It cleverly places the onus on the employer to prove that different jobs are of equal value. With respect, we suggest that is putting the cart before the horse. We always thought that in our free society and culture an accused was presumed innocent until proven guilty. Bill 154 presumes a business guilty until the employer proves his innocence. Perhaps if it could be scientifically, mathematically and rationally proven that job A is absolutely equal in value to job B in the same way that it can be proven that one plus one equals two, many of our concerns would be alleviated.

I would like to interject here and add something. Being the kind of people we are, we believe in the power of the parable that all analogies have weaknesses. In our discussions at our board level, we have come up with an

analogy we would like to share with you. It is weak and it has weaknesses but perhaps it will make the point we are trying to make.

When I drove into Toronto this morning on the Queen Elizabeth Way, the signs at the side of the road said I could not exceed 100 kilometres per hour. I could choose to go 80, 90, 100 or 120. If I exceed the speed limit and I am stopped by a policeman and charged, then I go to court. When I go to court, I am presumed innocent until proven guilty and the onus is on the policeman to prove that I am guilty.

Bill 154 reverses that completely. Bill 154 suggests that there are no speed limits on the Queen Elizabeth Way. If I decide to go 80 kilometres an hour, the policeman may stop and charge me. I then go to court. I go to court not presumed innocent, but presumed guilty, and the onus is on me to prove that I did not exceed the speed limit. However, there is no standard, no set speed limit and the judge may feel that 80, 90 or 60 kilometres is a fair speed. The point we are trying to make is that for whoever determines different jobs to be of equal value, there is a high degree of subjectivity, and that is our concern.

6. We are convinced that any wholesale intervention in the marketplace as Bill 154 proposes will result in chaos with a price tag Ontario may not be able to afford. Many members of the RCBPA are first-generation and second-generation immigrants from the Netherlands. By and large, they are hard-working, responsible and contributing members of Ontario and Canadian society. They came to Canada with very little, but because of the freedom of equal opportunity, they are today by choice proud, resourceful and thankful Canadians. Many will admit that they left the country of their birth because of increased and unwarranted government intervention in all aspects of their lives, leading to a deterioration of the family unit in particular and society in general.

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7. It needs to be said that all human beings are not created the same. We confess that each individual is a unique image-bearer of the Creator, each with his or her own individual characteristics, personality, potential and capacities. Our responsibility, male and female equally, is to develop our God-given talents to their full potential for His glory and the wellbeing of our neighbour. That is why we feel so passionately about the ideal of equal opportunity for all. With considerable dismay and frustration, we dare to ask whatever happened to good, old-fashioned ideals like personal initiative and hard work, with corresponding financial recognition, and corporate discipline in today's society?

8. Even the green paper admits that the cost of implementing pay equity could add up to billions of dollars annually. Can the Ontario economy absorb this and still protect jobs and allow Ontario industry to remain competitive? Already thousands of Ontario jobs have been eliminated or are threatened because of the higher productivity and lower wages of developing Third World countries who consider Ontario a prime market for their manufactured goods.

9. The pay equity proposals of Bill 154 remind us of the Big Brother mentality, depriving individuals of their unique personality, gifts and character and stripping from them all vestiges of personal responsibility, self-discipline and individual dignity. The horrible consequences suffered by Canada's native people as a result of a paternalistic and condescending government policy should be a lesson for us all.



10. Bill 154 would create another massive bureaucracy called the Pay Equity Commission. Somebody, read "taxpayer," has to pay for this. A whole new industry called pay equity consultants will be established. In many ways, it reminds us of the rent control campaign of the 1970s. Rent control then, like pay equity today, became a motherhood issue among politicians and the media alike. To speak against rent control then and pay equity now is something akin to speaking heresy. But we all know, including the most passionate defenders of rent control, that this program was a disaster. The very people rent control legislation was supposed to help suffered the most. We fear the same about the proposals of Bill 54. The very women it is supposed to help will suffer the most and so these women too will become victims of well-intentioned but misinformed ideals.

11. If Bill 154 is to be implemented, honesty dictates that we express appreciation for the provisions which differentiate between enterprises with different levels of employees. We also like the time frames Bill 154 allows for. Further, we appreciate and applaud the provision that limits wage increases related to pay equity to one per cent of the previous year's total payroll. We interpret these provisions of Bill 154 as an attempt to strike a balance between an alleged injustice and the realities of Ontario's economic activities. At the same time, we point to the inconsistencies of Bill 154, which provides exemption for employers with nine or fewer employees. Is that because there is no wage discrimination based on gender in companies of nine or fewer employees?

In the light of the concerns and questions expressed in this committee by ourselves and others, we urge the Ontario government to delay implementing Bill 154 until further studies have taken place.

Thank you very much.

Mr. Chairman: Thank you for a very sensitive and well-thought-out brief. Certainly, you have taken a considerably different perspective than some of the earlier deputations that we have had before us and it adds another dimension to our considerations on this particular bill.

Questions from committee members will be entertained now. Are there any?

Ms. Caplan: I have a couple of small questions. Are you aware that the federal government has had equal pay for work of equal value legislation in a complaint-based model for quite a number of years now?

Mr. Kersten: Yes, we are.

Ms. Caplan: Also, several jurisdictions--Minnesota and Manitoba, for example, as well as the European Community and Australia--have implemented it.

Mr. Kersten: Yes, we are aware of that.

Ms. Caplan: The question I have refers to Judge Abella's report, which you claim has not been well documented. I suggest to you that as far back as 1970 that documentation had been accepted.

If you are aware of all of the legislation that has been implemented and the acceptance of the principle, why do you say Ontario should not move forward? Other jurisdictions have moved forward and have not had the catastrophic impact you are predicting.



Mr. Kersten: First, Judge Abella's report is two or three years old; it is not many years old. Even Judge Abella makes reference in her royal commission report that even though there is a large wage gap, it is not all based on systemic gender discrimination or wage discrimination based on gender. That is the point we are trying to make.

We think it needs more time. We do not believe that some of the jurisdictions where pay equity has been enforced--in various models, by the way, not necessarily the model of Bill 154--need more time.

Ms. Caplan: You are aware that the principle and the documentation of systemic discrimination because of gender discrimination in the work force was accepted in 1970, I believe.

Mr. Kersten: Yes, we are aware of that.

Mr. Chairman: I have one brief comment and then a question. I am most impressed with the diversity of businesses that are represented on your board of directors with respect to your board members. Virtually no two of them are in the same line of activity; so you truly represent a wide cross-section of Ontario business.

The question I have for you is that a lot of organizations have different ways of determining the feelings, the attitudes and the positions of their memberships. I am interested to know how you would go about in your organization making a determination that this is the position you want to put before us, which is that you want to delay the bill, that you feel it needs further study. Can you enlighten us as to the method of communication? Is it by vote? How do you communicate with your members and get the feedback that you have presented to us? I know it is not an easy task, but I want to be assured in my mind that this truly represents the attitude of your members. Perhaps you can enlighten us in that respect.

Mr. Kersten: As we said in our introduction, we are divided into 13 chapters. These chapters meet regularly once every two months or so. As executive director, I attend those chapter meetings all across the province. At these chapter meetings, part of our agenda is to discuss what we are doing at the provincial level in terms of addressing government on various issues.

We have been involved in the pay equity issue for some time now. We made a presentation to the consultation panel on pay equity when the green paper first came out. That presentation was discussed and adopted by our board of directors.

Our board of directors is representative of the chapters. Each of the chapters elects a board member. They adopted the position we had then. The document was then shared with our members by means of our church publications, and we received input from that avenue. Last week, when we received word that we were invited to be here today, we called a special board meeting, and we again discussed the presentation and adopted it as a board representative of the chapters. That is how we are structured, and that is how we function.

Next week, Friday and Saturday, we will have our third annual convention at the Burlington Holiday Inn. On Friday afternoon, we have our annual business meeting. Part of the agenda will then be to review, study and analyse the presentations we have made on behalf of the membership.

Mr. Chairman: You indicated in the closing comments in the brief that if the bill is to become law, you have some concerns about the cutoff point of 10 employees being the minimum number. For all intents and purposes, you raised the question of why there should be any differentiation between 10 or nine. I believe that is the way you put it in your brief.

Mr. Kersten: Right.

Mr. Chairman: Is it your position that if this bill becomes law, there should not be a minimum number of employees? If that is not your position, what is your position if the bill becomes law? You infer that you at least question the number 10. You do not give an alternative, if the bill becomes law. You may have heard Mr. Hale's presentation where he suggested the number of 20.

Has your organization come to grips with that, because you do represent--from at least a cursory look from the document here--a number of businesses: Filman's Men's Wear, Dykstra Brothers Roofing, etc. You would obviously, in some instances--I do not know about those specifically--represent businesses of anywhere from one employee and up. Have you taken a position on that?

Mr. Kersten: We discussed that too and we realized what kind of a minefield we were walking into by including the number 11 in our brief. As I said, that is characteristically our style.

We are still at A and, I think, the government is at B. We are still at A, which says, "Folks, this is wrong." A is the disease. Your recommended treatment of the symptoms is what we have trouble with, and that is Bill 154.

If you are going to have a bill, it seems to us that honesty and consistency dictate that everybody, every employer, should be under the same rules and regulations. Most of the people whom we represent are what we call, with respect, ma and pa businesses, people with fewer than nine employees. The Voortmans of the world with 500 employees are the exception in our organization. We think that if you are going to have Bill 154--we do not believe it should be--then there should be some consistency. The government, if I may use that word in broad terms, has not given us a rationale as to why no below 10 and why yes above 10.

Mr. Ferraro: As a supplementary to that, sir, you say you have not been given a rationale. I would like to put forward the rationale I have heard many times, but obviously you have not, and I look forward to your comments. One of the main reasons there is an exemption, as alluded to by Mr. Hale, the previous speaker, is that the adjustment both economically from a time standpoint and perhaps even from a necessity standpoint is less severe for a company that is large, has the financial resources, the personnel and the time to do that--and perhaps the greater necessity to do it--than the small business person.

I agree with you. You can argue whether we should extend it to 20 or should we extend it to 50. In anything the government does, you have to put--perhaps arbitrarily but particularly with some logic--in this particular case a subjective limitation on where you are going to draw the line. For those arguments, which I personally believe are valid ones, we put that in.



Mr. Kersten: I agree that if one could adopt those as being valid arguments, Bill 154 is not nearly as dreadful as we suspected when we made our presentation to the consultation panel on pay equity.

Mr. Ferraro: That is probably because you have read it too. A lot of people are up in arms but they have not read it. Excuse me for interjecting.

Mr. Kersten: I think what the government is doing, as we admit in point 11, is trying to strike this balance. It is trying to look for dealing with economic realities, and we applaud that; we understand that. If a principle is right, if there is an injustice and if there is going to be a cure, then that has to be a cure across the table, it seems to us. There has to be some very conclusive evidence that for the number nine, 20, 30, or whatever number you arbitrarily subjectively use--to use your own words, with respect--there has to be very good rationale.

We appreciate what you are trying to do in trying to strike this balance, but now we are talking about the treatment, and we still are not convinced of the disease in terms of being as widespread as Bill 154--someone earlier today used the example of looking for an elephant with a microscope.

Mr. Stevenson: First, thank you for a very thoughtful presentation. Second, I have a question. In putting this position together, how many women have commented on this either as members of your association or in comments from church papers and that sort of thing? Have there been many positions put by women?

Mr. Kersten: To be fair, no. We encourage women to attend our chapter meetings. The bulk of our membership is made up of men. We have an individual membership rather than a corporate membership. At our convention, we will have 30, 40, 50 per cent women participation, but in terms of members and in terms of our board, as you can see by the names we have there, they are primarily men who own and run businesses.

Mr. Stevenson: But at least at your meetings there is a significant percentage of women.

Mr. Kersten: At our chapter meetings, that is correct; 30 or 40 per cent are always present at our chapter meetings. That is normally a lunch meeting or a breakfast meeting. That is where we interact at a very informal level for reaction.

Mr. Chairman: It was a fine presentation. I thank you for it. There are a lot of sensitive comments made there and a lot of sensible comments as well. Thank you for your time and that of your organization in coming before us.

That concludes the presentations for this morning. I ask the committee to come back here at two o'clock sharp and on time to this nonsmoking chamber so that we can resume our deliberations at that time.

The committee recessed at 12:07 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

TUESDAY, FEBRUARY 24, 1987

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Ferraro, R. E. (Wellington South L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Retail Council of Canada:

McKichan, A. J., President

Doucet, G., Senior Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 24, 1987

The committee resumed at 2:08 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Resuming consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, we now have a quorum. That being the case, I believe we can get under way with the afternoon discussions. I would like to invite the Retail Council of Canada to come forward. If you would take the front seats.

With the Retail Council of Canada, members of the committee, we have Alisdair McKichan, the president. Perhaps we could ask Mr. McKichan if he would introduce the rest of his delegation before he makes the presentation.

RETAIL COUNCIL OF CANADA

Mr. McKichan: Thank you, Mr. Chairman. We appreciate this opportunity to appear before you today. On my right is Gail Warnica, manager of personnel services at Sears Canada Inc. and a member of the Retail Council of Canada's employee relations committee.

On my left is Gerald Doucet, senior vice-president of policy for the council.

As I have said, we value the opportunity to appear before you in relation to this piece of legislation, the development of which we have been following with strong interest during its early stages and up to the present. It is obvious why we should, representing an industry that is a very large employer within Ontario and that, of course, employs a great many women.

In our submission, we have attempted to set out some proposals that we believe will make the legislation a great deal more workable. We do so without necessarily believing that the legislation will be the best means of achieving the end for which we are all striving.

In fact, we have strong apprehensions about the economic and other effects of the legislation, and it is for that reason that we will include in our commentary the strong proposal that the current government and any successor governments, in reviewing the progress of the legislation as it is introduced over time, examine it with a most conscientious and critical eye, because we perceive there is a real danger of it doing substantially more damage than whatever good it may do. We say that without any qualification at all in relation to the objective of administering the gap that exists between the average earnings of women and men.

We know that the bill is intended only to address and can only address a small percentage of that differential. Even so, we fear that the side effects may be grave, unpredictable and dangerous.



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Let me touch on a few of our suggestions. We recommend a substantially broader definition of "establishment." We think this is one of the key parts of the amendments we suggest. We do not believe it should ignore the question of functional difference in an establishment. For instance, in our industry, a firm may have both stores and warehouses, which are very different entities and which may have completely different job evaluation schemes and entirely different working environments.

The definition of "compensation" is satisfactory, so far as it goes, but in our view it is not complete enough. There is no specific reference to the commission situation. In our view, that should be treated as an entirely different and noncomparable type of arrangement. Similarly, there is no job rate provision.

In subsection 5(5), we think the blurring of the line between unionized and nonunionized employees will result in an implicit bias in favour of certification and the establishment of a bargaining unit. In our view, job classes inside a bargaining unit, for which other clauses of the bill require a pay equity plan agreed upon by the employer and the union, should not be compared with job classes outside a bargaining unit, where the pay equity plan is established in a different way and employer-employee relations are founded on a whole different set of relationships. We recommend the deletion of that clause.

Section 7(1) does not make clear that there are market forces, other than skill shortages, which may explain the difference in pay between a female and a male job class within an establishment. We allude to the structure and type of business in terms of marketing and pricing strategies, which may cause a difference.

To give an example of that, one corporate entity may run different divisions aiming at different price points for the attraction of the consumer, and the division which operates and markets the lower-price points may have to have a whole different type of marketing structure, including different wage rates. They may or may not be male or female, but we have situations where unions which represent both divisions of the company have agreed to that differential type of payment simply because without it, the low-price division would not be able to compete. We are therefore saying that type of phenomenon should be recognized in the legislation.

Subsection 7(2) allows for differences in compensation which are the result of differences in bargaining strengths. It would be better if this section were written so as to give the employer the benefit of the doubt. The difference is assumed to be the result of market forces or differences in bargaining strengths unless the pay equity commission or the employees prove otherwise.

In subsection 7(3), we touch on a phenomenon which is very significant in our industry, that is, part-time employment. We believe it is unfortunate the bill does not distinguish between what, in our industry at least, are two quite distinct classes of part-time employment.

There is what is commonly known as the regular part-time employee and there is the casual part-time employee. As the names imply, one has a whole different set of relationships with the company from the other. The regular part-time employee is, in most instances, treated very much like a full-time

employee because of his degree of attachment. The casual employee neither wants nor is awarded the same kinds of relationships or benefits. They are usually employed for just a short time; their interest is primarily in the money they earn and can attract right away. They are not interested in long-term benefits.

On section 12, we allude to the application of the bill to small numbers of employees and to small businesses. We think the concept of having an incumbency level of 10 is unrealistic. We suggest you can solve implicitly both the small business issue and the incumbency issue by reducing the number to five. We think that is a fair way of doing it and also avoids the feeling that people employed by small businesses are stigmatized as a result of that.

On subsection 12(9), we suggest it seems reasonable to provide that pay equity plans prevail over all relevant collective agreements and that adjustments to rates required by the pay equity plan be deemed to be incorporated into the relative collective agreements.

However, we believe a provision like that is almost bound to induce anomalies. For example, does the provision mean that the incorporation of such compensation meets any increases stipulated in the agreement? If the collective agreement maximums have been reached, the pay equity adjustment may be seen as additional to any new rates which might be negotiated.

We think there has to be more thought and detailed consideration given to that relationship between pay equity plans and the adjustments required in the context of collective agreements. We feel the likelihood is that, in most instances, if a union has nothing to lose by appealing a plan, it will almost always appeal that plan.

We make some recommendations in relation to administration, which I will not occupy the time of the committee in dwelling on. None the less, we think they are important.

That is the end of our brief summary of our position. We will be happy to respond to the questions of the committee.

Ms. Gigantes: I would like to thank you for your presentation. Do I understand that the retail council was represented on the business advisory committee which made proposals to the government?

Mr. McKichan: That is correct.

Ms. Gigantes: I would like to begin by looking at the question of the establishment and your concern about its definition. I would like to understand why it is you feel a warehouse that might be situated 15 yards from an office should create a situation where women who work in the office could not be compared to men who work in the warehouse in terms of their functions. Presumably there will be some functions in a warehouse that will be very much like office functions.

1420

Mr. McKichan: I guess there are two reasons. One, the actuality is that at present in many cases, there is a completely different set of job evaluation schemes applying to--

Ms. Gigantes: That is precisely our problem, is it not?



Mr. McKichan: Because of the different types of environment in which they work.

Ms. Gigantes: Is that not covered by working conditions?

Mr. McKichan: That might be one way of doing it. The second reason is that if the bill does not provide otherwise, the likelihood is that companies will simply incorporate different corporate entities to provide a variety of different functions and so circumvent the provisions of the bill.

Ms. Gigantes: Could you explain that to me?

Mr. McKichan: Say a company was operating a chain of retail stores on the one hand and one or more warehouses, trucking fleets and other ancillary operations on the other. If they were not able to deal with these as separate functional entities, the likelihood would be that they would establish a trucking business and a warehousing business, each of which would be a different corporate business and so would not be subject to comparison in any event.

Ms. Gigantes: I think that is a very important point, and I think we should have some response from the government about how it proposes to deal with that kind of manoeuvre. If a warehouse is situated 15 yards from a sales office, is there any inherent reason that women who work in that office should not be compared to men who may be doing work that can be called comparable in terms of skill, effort, responsibility and working conditions in the warehouse 15 yards away?

Mr. McKichan: If the jobs and working conditions are the same, there is logic in that, but the likelihood is that the jobs and working conditions will be different.

Ms. Gigantes: They may be different, but we are talking about comparable.

Mr. McKichan: I suggest that in many cases they would be both different and noncomparable.

Ms. Gigantes: Why would you want to change the definition to remove the possibility of comparability if you think they are not comparable? I think you think they are comparable and you do not want to have them compared, and that is why you want the definition changed.

Mr. McKichan: I think you would get into much finer detail of finding the differences that exist. You would be enmeshed forever in the laborious nature of doing that.

Ms. Gigantes: Could I ask about the incumbency that you would make the test for application of the legislation as opposed to the number of employees. First of all, you talk about the Retail Council of Canada representing firms of all sizes involved in the retail business in Ontario. Within the categories proposed in the bill for size of employer and the various steps in the bill associated with those different sizes of employer, could you tell me the categories where the preponderance of your membership would lie?

Mr. McKichan: I guess about 95 per cent of our members would be independents. I would not be able to give an estimate of whether they would



have more than 10 employees in that category. Of that 95 per cent, probably around 60 per cent or 70 per cent would have fewer than 10 employees.

Ms. Gigantes: I guess this is a different way of looking at similar kinds of information. I do not know if it is possible for you to provide the information now. What percentage of the employees employed by your membership would be in large firms? That is a different question.

Mr. McKichan: Yes. The preponderance would be employed by large firms to the extent of about 70 per cent. I am guessing.

Mr. Chairman: Large is, by definition, 100 and up?

Mr. McKichan: I was defining it in my own mind as about 500 and up, but there would not be much difference between 100 and up and 500 and up.

Mr. Chairman: You are saying you are either one or the other.

Mr. McKichan: Yes.

Ms. Gigantes: Would you consider the proposal to change the definition of establishment on the grounds of functional one that would be of most interest to the people who employ most of the employees in the groups represented by your council? On the other hand, in terms of the recommendation you are making for the minimum application of the law, it would be the incumbency which would have the most direct effect.

Mr. McKichan: Yes. The small employers probably do not have more than one establishment of any kind.

Ms. Gigantes: Certainly not within one--well, maybe within one geographic region.

Mr. Doucet: Could I add something? This issue of definition of establishment is one that has perplexed us all the way through. We studied the green paper and we went to see the consultative panel. To be clear, I guess our message is not that there be one definition or another, but that there be some flexibility to reflect the realities of the marketplace.

A geographic definition works in some instances; a functional definition seems to work in others. Our message to the minister and to the consultative panel and so on was that there be some reflection of flexibility in this definition so that, in specific situations, you might even have a mix, if necessary, to implement the bill as effectively as possible.

Your point about arbitrariness, a warehouse 15 yards from a store, can be turned around in terms of the geographic definition to say, "It is another geographic area 15 yards from this geographic area." Why should we be arbitrary about saying this geographic area cannot be compared with that? There is always going to be some arbitrariness in drawing a line.

There are clear instances in the retail trade where some element of functional, job evaluation system, personnel policies and so on, makes sense. Our position all along is that we not define establishment strictly in terms of geography but in that way.

Ms. Gigantes: You do understand the problem with the functional definition which is that, realistically speaking, there has been a functional

definition of pay. The function has very often been defined in terms of male and female functions and male and female work places even within the same establishment and within the same 50-yard radius. That is precisely the reality of the marketplace that this legislation is attempting to address. The reality of the marketplace has meant that in real terms, women have been discriminated against in terms of their pay for the value of the work they have been doing. It is precisely for that reason that we are considering legislation.

Mr. McKichan: Our point is that the legislation and the attempt throws up so many anomalies of the kind we are discussing that we are perplexed to know whether it is going to be feasible.

The point also slops over into the one we make in relation to section 7. I alluded to the different types of business under one corporate umbrella attacking completely different markets which require, if they are to be successful, completely different cost structures. In our industry, one union representing employees in both types of division has recognized that to be the case and has acquiesced in completely different wage rates and scales. It has done so because it recognizes that if it did not, there would not be any jobs in one of the divisions.

It seems to me it is quite possible that, in that kind of situation, it might happen that one set of employees would be female and in the other division, one set of employees might be male. Then we will run up against this type of situation, but it seems that the legislation is wrong if it attempts to alter that situation which is arrived at for perfectly good marketing reasons.

Ms. Gigantes: Yes, I understand what you are saying. I do not think we have had a response from the government about how a change along the lines that have been suggested here, which is a change of corporate structure that could overcome the definitions now set out in the bill, would be dealt with. I think that would be interesting to hear.

1430

Perhaps I could for a moment--and I will not take any more time of the committee--ask a little bit more about the suggestion on incumbency. If we were to redefine the application of this legislation at year 6 to year 7, I guess it would be, the way this bill runs, to firms which had at least five incumbents in a job class that was to be compared for purposes of this bill, what size do you think most of those firms would be? For example, I cannot imagine a firm with 10 employees where you are going to have five secretaries whom you can compare to five janitors or whatever.

Mr. McKichan: You could conceive of a small firm which is partially processing or manufacturing and partially retail, and there are such firms manufacturing handicrafts and things like that, where there would be that kind of situation.

Ms. Gigantes: Can you give us an example in retailing?

Mr. McKichan: In pure retail?

Ms. Gigantes: Yes.

Mr. McKichan: It is unlikely. Usually in a very small firm, the majority of the jobs are sales jobs, and there would be a few support staff.



Ms. Gigantes: I think when you suggest to us that if we looked at a minimum incumbency of five and considered that might be a tradeoff for employment of 10, that may be pretty far-fetched.

Mr. McKichan: I do not think so. I think you would find a sufficient number of cases to make it meaningful.

Ms. Gigantes: As a final question in aid of Mr. Dean, have you any objection if the government releases the implementation studies the advisory group did?

Mr. McKichan: We would like to see them.

Ms. Gigantes: Would you like to see them or would you like to see them released?

Mr. McKichan: We would like to see them released.

Mr. Doucet: And therefore to see them.

Ms. Gigantes: Thank you.

Mr. Ferraro: Mr. McKichan, thank you for your brevity and the presentation of your brief. It was very clear, for the most part. I have one area of clarification, and it stems from Ms. Gigantes's queries about the third recommendation, the incumbency level. I will pick right up where she left off.

If I understood Ms. Gigantes correctly, she concluded what probably a lot of people are thinking. From my thinking and my understanding of small business, if you have an incumbency level of five, I conclude that would probably preclude a heck of a lot more small businesses than the 10 allocation. I am not convinced that by putting in the incumbency level at five you would have any fewer businesses, from the numerical standpoint, than what is being suggested in the legislation; quite the contrary. Could you elaborate for me?

Mr. McKichan: That is a good point. We approached the issue of incumbency levels from a couple of points of view. First and foremost is this issue that if we are battling gender discrimination we should be battling it anywhere we find it, so why should a small business ipso facto be excluded? That raises the constitutional issue, for example. I assume at some point someone might question a small business exemption in terms of the Charter of Rights.

The second point is that too often in government regulations and the law, legislation is passed which makes some kind of an exemption that has a market-share impact. It tends to favour a certain type of business over another type of business. We do not think that should be the role of the government's legislation, even though many of our members are small businesses, and we are sensitive to the fact that they will have to cope with the administrative burden of implementing this legislation.

We think a better way to go is to say that for any business in Ontario, rather than comparing 60 per cent of two or three, a small number, in terms of female job class, which seems absurd, we should at least have some cutoff level. That is as arbitrary as anyone in the room can choose it to be.

Originally we thought of 10, but we recognized that, even though the New



Democratic Party government in Manitoba did have a minimum incumbency level of 10, applying 10 across the board of industry might exclude too many situations. So we dropped the incumbency level to five, which is really designed to exclude ridiculous comparisons based on one or two employees where you already have predominance percentages of 60 for female and 70 for male.

You are right that by our approaching it as a level of minimum incumbency, more types of small businesses will be in a position not to apply this bill in their specific situations, but we are not proposing it from the point of view of avoiding employment equity or the elimination of gender discrimination. We are committed to getting rid of that wherever it occurs. We are really proposing it from the point of view of minimizing the--

[Failure of sound system]

Mr. Ferraro: This is the final question I have. Mr. Doucet probably can answer this. I am not very well versed on the Manitoba experience, save and except it is my understanding from my staff that Manitoba's incumbency schedule, for lack of a better terminology, did not prove very successful at all. Maybe you can enlighten the committee on how Manitoba dealt with that.

Mr. Doucet: I would be interested to know in what sense they mean it was not successful. Did they mean that because of that incumbency level, not many people were brought in in the end?

Mr. Ferraro: It exempted too many people, particularly women. That is my understanding. I do not know. Maybe you know more about it.

Mr. Doucet: I do not know the actual result, but five is better than 10, I guess.

Mr. Ferraro: You mentioned Manitoba. I lied, but this is my last question, Mr. Chairman. Do you know of any other jurisdiction that had the incumbency level?

Mr. Doucet: I am not absolutely certain. Minnesota may have a minimum incumbency level, but the one I know of in Canada is Manitoba.

Ms. Gigantes: We are discussing a Manitoba public sector bill; we are not talking about a private sector bill in Manitoba.

Mr. Ferraro: No, it is the broader public sector.

Mr. Chairman: Mr. Ward wants to respond to a question that was raised earlier and perhaps shed some additional light on the question. Go ahead.

Mr. Ward: I do not know whether I can shed any additional light, but I want to comment on the example you used with regard to the warehouse and the creation of a separate establishment. I am not at all certain it is either likely or possible under the definitions. The "geographic division" is defined as "a county, territorial district or regional municipality"; the "establishment" is defined as "all of the employees of an employer"; and the definition of the "employer" is a common law definition, that entity that has control over compensation packages.

To go to the lengths you indicated, it is not unusual for corporate structures to be arranged in such a way as to provide different services

through different divisions, but I am not so sure that simply going out and getting a corporate number and saying the warehouse operates under that escapes the definition of establishment, if the control of the compensation package rests with another body.

Mr. McKichan: That is true.

Mr. Ward: It seems to me to be really stretching it to get there. I am not saying it is totally impossible, but it is a pretty long stretch.

Mr. McKichan: Mind you, one can envisage variations of that injecting different capital sources and so on.

Mr. Ward: I understand.

Mr. Chairman: Can I ask a question that you addressed earlier with respect to the number five you have chosen for a group of employees in a particular area, instead of 10? We are constantly getting the question in this committee, how did you arrive at 10? Why not 20 or zero? Can I turn the tables and ask you why five? Why not seven or four? How did you arrive at that number?

1440

Mr. Doucet: The issue about exclusions or exemptions has been debated all the way up to 50 employees. We have never supported a number that meant a certain type of business would be excluded altogether, even though many of our members are small businesses. Rather, we have approached it by saying that for sensible comparisons between job classes, for the purposes of implementing this bill, we should not have to deal with just one employee compared to another, or one and a half or two with two. We should at least have an incumbency level that makes some sense. Quite frankly, five is very arbitrary. Originally, we had been arguing along the lines of the Manitoba public sector bill of an incumbency level of 10.

We are sensitive to the fact that, with 10, you may exclude too many types of job classes and therefore not get at the problem we are trying to get at. Five seems to be logical in that context.

Ms. Gigantes: In principle, if there is a payroll of nine people and one of those people is a woman and the work she is doing might be comparable under this legislation, why should the legislation not be available to her to use?

Mr. Doucet: That is a very good question, Ms. Gigantes. Many aspects of this bill have arbitrary features in them.

Ms. Gigantes: Why is that any less a charter case than your suggestion of leaving out all firms that employ fewer than 10 people?

Mr. Doucet: I am not a lawyer, so this answer is more one of a policy person. The incumbency approach is an approach on behalf of all residents of the province, male and female, and all types of businesses. It does not distinguish between male or female and it does not distinguish between size of business. That is essentially what our approach was.

There is no question that there are aspects of this bill that are quite arbitrary, and one can question whether a certain type of situation should be excluded. That goes back to the heart of what is the objective of this

legislation. As I understand it, the objective of the legislation is not one of setting wage rates for every single person in the province. It is one of getting rid of gender discrimination, particularly in ghettos that we all know about.

If we are talking about eradicating gender discrimination in the so-called ghettos that have been set up, then we are talking about dealing with job classes and groups of employees and not trying to set every single person's wage by an arbitrary means.

Mr. Chairman: Do you look at that as being another method of collective bargaining outside of the collective bargaining process? Is that what you are saying?

Mr. Doucet: The way the bill is drafted now?

Mr. Chairman: Yes. That kind of approach you just outlined. Is that one of the fears you have; that there would, in fact, be pressure for collective bargaining even though you did not have an organized unit that was bargaining with an employer?

Mr. McKichan: I guess it is not so much that as the sense that, necessarily, legislation of this type is intrusive and because it is intrusive, it is disruptive. Because it is disruptive, it creates side effects and, potentially, tensions in the work force. We are saying that recognizing that, it is realistic then to limit that extraneous damage to an area where there is a relatively positive payoff.

Mr. Chairman: You may have it somewhere in your brief, and I could have missed it but, in total, the Retail Council of Canada represents how many employees?

Mr. McKichan: In Ontario, I suggest between 300,000 and 400,000.

Mr. Chairman: That is rather a wide gap. Is that because there are seasonal fluctuations and that sort of thing?

Mr. McKichan: Depending on how you classify part-time employment and whether you treat it as full-time equivalents and so forth. If you treat them as full-time equivalents so that one and three quarter part-time employees equals one full-time employee, it would be at the lower end of 300,000. If you treat them as individuals, it would be 400,000 or thereabouts.

Mr. Chairman: I asked the question about Canada but that is in Ontario.

Mr. McKichan: That is Ontario.

Mr. Chairman: What would be the female-male mix of the numbers, roughly?

Mr. McKichan: They would be about 70 per cent female and 30 per cent male.

Ms. Gigantes: In the introduction, I had difficulty reading this paragraph originally, and I am now even more confused.

In the third paragraph on the first page of your introduction, there are



200,000 Ontario residents referred to as employees. Is that associated simply with specialty and regional retail associations?

Mr. McKichan: That count would cover our direct members. We also have affiliated with us in the figures I gave the chairman those relating to the various specialist associations like the shoe retailers, the jewellers and so on, representing specific individual trades.

Ms. Gigantes: We have tried to make some kind of correlation that would give us the full-time equivalent. What proportion of employees would be part-time? Do you have figures on that?

Mr. McKichan: It would be about 50 per cent.

Ms. Gigantes: Fifty per cent would be part-time?

Mr. McKichan: Yes.

Ms. Gigantes: Would most of them be covered by exemptions under this legislation?

Mr. McKichan: It is not actually clear. It is the point we made in relation to subsection 7(3) in which we suggested we include people with durable attachment to the work force, because the casuals come and go with great velocity and it would be a thankless task to attempt always to monitor--

Ms. Gigantes: That was another point which confused me. I could not understand why it was so important in working out the definition of "casual" and "part-time" when in fact we are talking about compensation. If there is a question that arises because of the level of benefits assigned to one group as opposed to another, is that not accommodated within the notion of total compensation?

Mr. McKichan: Typically, if the casual employee is doing the same job, he or she gets the same wage rate as the regular employee, but they do not get the same level of benefits, often because if they were to get the benefits they would be of no use to them, because they have to work so many weeks and achieve certain levels of earnings and so on.

It is inappropriate to make these kind of benefits available, and for this reason, you cannot really compare these two. You can compare them on the rate for the job, but you cannot compare them in relation to compensation which includes total benefits.

It would not be fair to try to establish a dollar equivalent to the other benefits, because a lot of them are contingent benefits which may or may not be used depending on whether you need your teeth fixed or whatever.

Ms. Gigantes: It is not whether you get your teeth fixed. It is how much the employer puts into the pot for you to be able to get your teeth fixed in an insurance plan.

Mr. McKichan: Yes, but there is no logic in making available a cash equivalent to a benefit if the benefit is not going to be capable of utilization by the employee for whom it was conceived.

Ms. Gigantes: I will have to give that some more thought. It has been a long time since I did Christmas work in retail situations. I will have

to think about that. I am sure there must be a way to make some kind of reasonable--

Mr. McKichan: You are not dividing up a pot of money. You are giving benefits where benefits were needed. If the benefit is not needed, it is illogical to make a provision in lieu, would be my strong argument.

Ms. Gigantes: I will not fight with you about it now.

1450

Mr. Chairman: One final question; I do not see any others on the floor at present. In his representation this morning, Mr. Hale from the Canadian Organization of Small Business, which, I assume, would have some similar concerns to yours and may align itself with your concerns in some fashion, made quite a point of the problem, as he identified it, of the reverse onus clause. It appears the employer could, in fact, be guilty until he or she proved himself or herself to be innocent. You are quiet on that point in your brief. I wonder if you do not see it as a concern or if it is not a matter of any importance to you. What is your response to that?

Mr. McKichan: Generally speaking, we are against reverse onus clauses. Did our committee do a study on that?

Mr. Doucet: Not specifically the reverse onus thing, Mr. Brandt, but we are very worried. At the end of our brief, it is one of our five major points that the regulatory powers of the pay equity commission are far too open-ended and lead to instability in the implementation of pay equity plans and injustices along the lines of the one Mr. Hale referred to.

I will give you one example. When you negotiate a collective bargaining agreement, however long it takes, you sign an agreement and it stays in effect for a period of time. These pay equity plans can be turned over almost automatically, based on any complaint, on an anonymous basis or a third-party action at any time. They are not set in stone, according to the legislation, and there is no sense in which, once you have a pay equity plan, it is a stable thing that remains for even the life of the collective bargaining agreement it is working in parallel with.

Then when you come to a complaint or an action, there is nothing in this legislation that addresses the issue of the costs of an employer, for example, dealing with a particular complaint and being saved those costs if, in the end, the employer is vindicated.

The only way in which the reverse onus thing has come up is that we certainly feel employers in the province should be looked on and the legislation should reflect that they are innocent until proven guilty, in a sense.

Second, if there is some case made against their pay equity plan that is not upheld by subsequent investigation, the costs involved should be to the pay equity commission or some other group, so that those kinds of actions are kept to a minimum. We are very worried about that. The retail council has not come up with a proposal on reverse onus itself.

Mr. Chairman: Let me be clear on that point. Are you saying the retail establishment should be reimbursed for its costs in having to undertake the defence of its plan or its position relative to a pay equity situation? Is that what you are saying?

Mr. Doucet: I would answer yes.

Mr. Chairman: If it was a \$20,000 case with legal costs and all the rest of it, you are saying someone should pay if you are proven innocent.

Mr. Doucet: It is not something our committee focused on, but in subsequent discussions with other business groups, we have come to realize it is an important issue. Otherwise, you are going to have many frivolous actions taken that will make these pay equity plans unstable and not implementable in a logical fashion.

I think the issue, for example, of the stability of collective bargaining agreements should be used as a guide in the design and implementation of the pay equity plans. There is an appeal process under the employment standards branch for all kinds of actions that may or may not be desirable in the work place. In the pay equity case, it is not clear where the commission is going to reside, what type of appeal process is involved and whether these costs would, in fact, be reimbursed in some way.

I am not actually making a proposal, because our committee did not focus on that. This has come up in subsequent discussions with other business groups.

Mr. Chairman: Mr. Baetz and then Mr Ferraro.

Mr. Baetz: Do we have time?

Mr. Chairman: Yes.

That is as much time as we have, Mr. Baetz. I am kidding. Go ahead.

Mr. Baetz: Do not rush me.

I have been impressed with the way this brief has been couched in very diplomatic and polite language, and knowing the president and having worked with him for many years, I am not surprised at all, but I am really wondering how accurately this reflects the, should we say, depth of feeling of your membership throughout the province on this subject. Would you say there is not all that strong a feeling one way or the other on this subject? How thoroughly have you canvassed the views and attitudes of your members? I get the feeling you are leaving unsaid some things you might want to say. I do not know.

Mr. McKichan: We operate, as most organizations do, on a committee system. We have had input to this submission both from those who are experts in the area of personnel and employee relations from the medium-sized and larger companies and from those who are not experts but who are involved in the day-to-day managing of their businesses from our independent stores division.

It would be true to say that in the rank and file of our membership, particularly among the independents, the vast majority have not yet focused on what this legislation is likely to mean to them on a day-to-day basis. Although we have attempted to explain that to our members in our publications, it is difficult for any busy business person to take the time to study the implications of the bill on his day-to-day operations. If we have been guilty of undue softness in our language--

Mr. Baetz: A diplomat.



Mr. McKichan: --I am culpable for that, and so is my colleague. We do know that among those who have had the opportunity to study the bill there is a great deal of concern. There is more concern about this piece of legislation than any I have discussed with them over the last 10 years.

Mr. Chairman: Even bottles and cans?

Mr. McKichan: Even bottles and cans.

Mr. Chairman: I am bringing up a little historical matter of interest that you and I discussed at one time.

Mr. Charlton: For you, that was a hysterical matter.

Mr. Baetz: Do not interrupt the train of thought on this.

Mr. McKichan: It is a matter of high concern and a great deal of potential anguish.

Mr. Ferraro: I have one question, and maybe Mr. Ward or the staff can correct me. The anonymity involved in the complaint has been alluded to on several occasions. For clarification, if employees have a complaint to make to the commission, they can do so on an anonymous basis. Is that correct?

Mr. Ward: Yes. They can do it through a third party and, I suppose, maintain anonymity.

Ms. Gigantes: Could we refer to the section that deals with the complaints? I do not think that is an accurate reading of the bill.

Mr. Ferraro: It is section 21. I do not think it specifically says you have to be anonymous, but it has been alluded to in several presentations, and I want clarification before I ask the delegation a question.

Ms. Gigantes: I had it this morning when we were discussing this. Was it section 21? I think it was.

Mr. Ward: Subsection 32(4).

Ms. Gigantes: That deals with the hearing. If you look at subsection 21(1), under the heading "Enforcement," it says "Any employer or employee, or the bargaining agent, if any,...may file a complaint." That means it has to be a bargaining agent, an employee or an employer, no third party.

If there is a hearing, the commission may hold the name in confidence if it has an application--I do not know--but the legislation is not specific on that. It says the complaint can be lodged only by those people and when you get to the hearing, you may have third-party representation.

Mr. Ferraro: Can we get clarification from the government?

Mr. Ward: We will get clarification. I fear Evelyn is right.

Mr. Ferraro: Notwithstanding that we will get the final word from the government and clarification in that regard, let me ask the delegation its opinion. It has been alluded to in several of the presentations being made that there is perhaps this injustice from the perspective of the employer. I can say quite honestly that I can appreciate that. From the perspective of the

individual lodging the complaint, however, I have different feelings. I am sure we can all appreciate those feelings.

1500

Obviously, if a woman or a man--more often a woman--is being mistreated according to the plan, she lays a complaint through the commission. We are only kidding ourselves if we do not think for a minute that there is possibly some retribution coming back to her from the employer. That is natural. On the other hand, if you are an employer and you have someone giving you a lot of grief from your perspective, you would like to know who that individual is. Is there a compromise in a situation like that? Do you think a commission should have the right to withhold the names, or should it be public?

Mr. McKichan: Our committee did not take a position on that. I could give you a personal reaction, but I do not think it would be--

Mr. Ferraro: I would like a personal reaction.

Mr. McKichan: I can concede their arguments for not disclosing the name of the complainant.

Mr. Doucet: You need to distinguish two types of action here. One type of action is the case where a woman feels she is being discriminated against because the pay equity plan is not being implemented in a way that she understands it should be. The kind of instance I was referring to that creates instability is that the pay equity plan itself, having been approved by the union or after 90 days of scrutiny by employees who are not organized, can be brought into question in other ways as well, based on complaints or motions made to the pay equity commission. Maybe we have to differentiate between those two types of situations.

It seems to me it is desirable to get a pay equity plan established and implemented over a certain period of time without its being brought into question, but in the actual case of discrimination or alleged discrimination, the individual should have a maximum opportunity to make that case to the commission as she or he deems fit.

Mr. Ferraro: I am not arguing that point at all. There very well may be a case for that differentiation. All I am saying is, should the complainant have anonymity or should the complainant not have anonymity? I think he or she should.

Mr. McKichan: Yes, I think there are arguments in that situation. At the same time, they are slightly different points.

Mr. Ferraro: The arguments for achieving stability are very strong.

Mr. McKichan: May I add a coda to my response to Mr. Baetz's question? I would not want to leave the committee with the impression that because of that level of concern in the industry it is the industry's belief that there are huge areas of discrimination going on within the industry. That is not the case. The concern is because of the envisioned amount of bureaucracy and time that is going to be absorbed in working through this type of legislation, and the expense attendant on that.

Mr. Charlton: I know you may not be able to answer this just off the top, and if you cannot, perhaps you can provide the committee with this

information at some point before the end of our hearings. You mentioned that probably 95 per cent of your members are independents, but probably as many as 70 per cent of the employees of your members work for that group of 500 and over. Do you have any idea of how many of the employees of your members are unionized?

Mr. McKichan: Yes. I can describe it without getting into the specifics of the numbers.

The level of unionization is strongest in the corporate food distribution sector where most of the corporate employers are unionized in their corporately owned outlets. Conversely, there is only sporadic unionization in the general merchandise trade, confined to some major stores and a few scattered medium-sized stores. The level of unionization is relatively low; in that sector, I suggest it is probably not more than five per cent of the total employees. Within the independent sector, there is almost no unionization.

Mr. Charlton: I would like to go back for a minute to the other issue that you raised and that the parliamentary assistant responded to, this corporate question and the ability, if you like, to end-run the legislation by corporate changes. He can correct me if I am wrong, but I think that, to some extent, the parliamentary assistant did not fully respond to the question and perhaps somewhat misled the committee in his response.

I want to understand what the parliamentary assistant was saying. In the case of a Loblaws versus those who own Loblaws, which is going to be the employer under this piece of legislation? Is the employer the Loblaws corporation or Weston?

Mr. Ward: The owner is the corporate entity that has control over the compensation of an employee.

Mr. Charlton: That is Loblaws. That is right. As the gentleman said, if any one of the companies that now has three divisions decides, because of the implications of this legislation, to create three independent corporations, there is not going to be any cross-comparison between those three corporations.

Mr. Ward: No, but it is not simply a case of divorcing a warehouse from, say, a retail operation; it has to be a complete corporate structure.

Mr. Charlton: That is what he was suggesting, though. He was not suggesting the kind of fiddles you were responding to. I am saying that your answer did not respond to what he raised. That is where the misleading came in. You responded to some kind of corporate fiddling when he was talking about creating three separate corporations, I believe.

Mr. McKichan: Our point is that it is better to have a reasonable degree of flexibility and a determination of what is appropriate as an establishment than to attempt to be very rigid and specific because you may achieve less than you hope and create anomalies where otherwise you can avoid them.

Mr. Ward: The point I was trying to make is that by corporate fiddling and establishing three corporate identities without establishing three separate areas of control over compensation--



Mr. Charlton: Yes. The point has to be understood, though, that this is possible and is something we have to look at. We should not just write it off as something that cannot be--

Mr. Ward: It is possible but it takes a lot more than going out and getting a corporate number--

Mr. Charlton: The bigger the stakes, the more incentive there is going to be to do exactly that. We should not just write it off by saying, "No, we do not think those fiddles are going to work." They can work.

Mr. Ward: I do not think it was being written off.

Mr. Chairman: Let me thank you on behalf of the committee for appearing before us this afternoon. We appreciate your comments and responses to our questions.

If there is no further business for the committee, we will meet again tomorrow. I have one final comment. The chairman will not be here tomorrow; I am going to be away. I know that is a disappointment to you. However, Mr. Dean has consented to take the chair in my absence. He will be the acting chairman tomorrow.

Mr. Dean: Did you say the yacking chairman?

Mr. Chairman: No, the acting chairman.

The committee adjourned at 3:10 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, FEBRUARY 25, 1987

Morning Sitting





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Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Ferraro, R. E. (Wellington South L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Retail Merchants Association of Canada (Ontario) Inc.:

Blakey, H., Director; President, Helen Blakey Flowers

Keith, N. A., Legal Counsel; with Mathews, Dinsdale and Clark

From the Canadian Federation of Independent Business:

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 25, 1987

The committee met at 10:08 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Resuming consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

The Acting Chairman (Mr. Dean): Good morning, ladies and gentlemen.

I see a quorum, and since we are slightly past the scheduled hour, I think we should begin. Unless there is some procedural business or something somebody has something to bring up, we will go to our first presenters, who represent the Retail Merchants Association of Canada (Ontario) Inc. and Flowers Canada Ontario. Do we have Helen Blakey and Norman Keith? Good morning. The floor is yours for the next half-hour. I am sorry, we have an hour scheduled for you. You do not have to fill up all that time.

Clerk of the Committee: No, we do not. We have a cancellation. They have a half-hour.

The Acting Chairman: Okay. You did not tell me that.

Clerk of the Committee: I am sorry.

The Acting Chairman: Who would like to begin?

RETAIL MERCHANTS ASSOCIATION OF CANADA (ONTARIO) INC.  
AND FLOWERS CANADA ONTARIO

Mrs. Blakey: I am Helen Blakey. I represent the Retail Merchants Association of Canada (Ontario) Inc. I am also a florist. I have a shop in Agincourt and employ 10 people.

The Retail Merchants Association of Canada appreciates the opportunity to meet with the standing committee on administration of justice on the subject of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

The Retail Merchants Association of Canada represents more than 9,000 independent, owner-managed retail businesses across Canada, including about 3,700 in Ontario. RMA members cover a broad cross-section of the retailing sector, including food and variety stores--about 70 per cent--furniture and appliance stores--about 10 per cent--automotive supplies and services stores, retail druggists, restaurants, shoe and clothing retailers, retail florists and many more. The RMA provides a wide range of services designed to enhance the competitiveness of and quality of working life in member businesses.

About 15 per cent of RMA members will be subject to Bill 154 in its present form. Few, if any, of these businesses have the sophisticated personnel systems necessary for effective compliance with the legislation, even when employers attempt to be scrupulously fair in personnel and compensation practices.

The RMA deeply regrets that the government of Ontario virtually ignored the practical and constructive suggestions of many responsible employer organizations during the previous consultation process. The RMA does not believe this deeply flawed legislation will achieve its declared objective of improving the economic opportunities of the majority of working women in Ontario. It embodies the kind of wishful thinking that often leads to counterproductive results despite the noblest intentions.

The RMA believes that Bill 154 is inappropriate and unnecessary legislation which will result in social and economic hardship and costs that clearly outweigh any possible benefits of the legislation. In part III of this brief, the RMA sets out its objections to Bill 154 and gives constructive recommendations that will enhance equality of opportunity in employment for women in Ontario.

Part IV of this brief addresses some specific concerns of the RMA with Bill 154 as presently drafted. These include increasing the criteria by which the value of a job is determined and a provision to protect employers from frivolous or ill-motivated complaints to the Pay Equity Commission of Ontario. The RMA requests that this committee recommend against proceeding with Bill 154 and, as an alternative, requests that the suggested amendments be accepted to make Bill 154 fairer and more workable, both for employees and employers in the private sector.

I forgot to introduce Norman Keith. He is with me now and will deal with specific recommendations in these areas.

Mr. Keith: I am beginning on page 4 of the brief. I do not propose to read the brief or review it in any detail, but simply to highlight and comment on for various submissions on behalf of the association we are representing here this morning.

Part III is the first part I want to deal with. It is the concern of the association with the appropriateness and necessity of Bill 154. Frankly, the first concern is that Bill 154, in the view of the association, would lead to excessive, inappropriate and counterproductive overregulation of private employment relationships. At present in Ontario, employers, unions and employees enjoy considerable freedom with respect to setting terms and conditions of employment, specifically compensation. Bill 154 will unduly restrict this long-standing freedom which has existed in Ontario.

The Retail Merchants Association of Canada (Ontario) Inc. recognizes and quite frankly supports government regulations relating to minimum standards, such as the Employment Standards Act, which place reasonable, clear and easily quantifiable limits on employment practices, such as minimum wage, maximum hours of work and termination pay.

We indicate that Bill 154 will do something more than the existing kind of legislation which already regulates in a minimum standards way the employment relationships of management to union and employees in Ontario. We believe that Bill 154 will create an exceedingly complex and sophisticated method of attempting to assess and correct what are perceived to be wage and salary inequalities based on gender. That is confirmed in section 3 of the legislation as it relates to the purpose of the act. We believe that Bill 154 will confuse and will add to confrontation in the work place and increase the level of conflict and possibly strike activity which may affect all Ontarians.



We also believe the regulatory overkill involved in this legislation would be excessive in any well-managed business, but in particular it somewhat insults the flexible, personalized and nonbureaucratic approach which exists in most small businesses that are members of our association. In the view of the association, that overregulation is particularly offensive when one considers that this regulatory pollution in a sense is being proposed notwithstanding that provincial legislation already exists to prohibit gender discrimination and to provide equal pay for doing substantially the same work.

Members of the committee may or may not be aware that section 33 of the Employment Standards Act provides that a female employee may not be paid a lesser rate than a male employee for doing substantially the same work. Unfortunately, nowhere in the legislation is any thought given or is the issue even addressed as to whether Bill 154 will supersede section 33 of the Employment Standards Act or will be in conflict with it, and if there is a conflict, how that conflict will be resolved.

I am sure most people are aware that the Human Rights Code prevents discrimination on the basis of gender. By virtue of the equal pay for substantially the same work legislation which has existed in some form or another in Ontario since 1951 and the Ontario Human Rights Code which has been around in some form for a longer period of time, the association is of the view that the existing legislation adequately addresses the kinds of concerns that Bill 154 is here to address.

In our view, the Pay Equity Commission, which is a tribunal established by Bill 154, the government inspectors who are now being popularly described as the pay police and the various other enforcement agencies contemplated and established in a new form under Bill 154, are inappropriate. On page 7 at the bottom, the association asks two questions. "Why is the Ministry of Labour not involved in regulating Bill 154?" The Ministry of Labour regulates the Employment Standards Act and the Ontario Human Rights Code through the Ontario Human Rights Commission. We also ask, "Why do we need new bureaucracies to enforce Bill 154 when Ministry of Labour officials throughout the province already enforce the equal pay for doing substantially the same work legislation?" Those are questions we would ask this committee to specifically address and attempt to answer in reporting back to the government.

The third basic concern with the concept embodied in Bill 154 is that there does not seem to be much attention given to the fact that there are a number of predictable social and economic costs which, in our submission, clearly outweigh any possible benefits the legislation would give to the people of Ontario. The first and most obvious is the direct cost to employers. In the government's green paper on pay equity of last year, there was an estimate of \$2,000 to \$3,000 per person as the cost of implementing the pay equity legislation. I have been led to believe that other studies which have not been made public indicate that the costs on an individual or per person basis may be substantially higher than that. We would ask this committee to take that into account in calling for full public disclosure of any such other reports.

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We also believe there is a chance of increased bankruptcies in Ontario as a result of this legislation and the cost it will create. It will lead to business failures. Increased unemployment and general economic inefficiencies are probable consequences of this legislation.

Further, the fifth point, on page 9, is that increased government expenditures are a necessary obvious result; this is a cost to the people of Ontario that this legislation will create. We are not adding to the existing bureaucracies of the Ontario Human Rights Commission or the employment standards branch of the Ministry of Labour; we are creating a whole new enforcement mechanism that in our view seems to be unnecessary as it would simply add costs to the taxpayer that are not going to be flowing back in a substantial benefit.

The basic conclusion that the association would like to leave with this committee is that the economic and social costs to Ontario and especially to working women in Ontario will undoubtedly outweigh the benefits. The association does not want simply to leave a negative kind of feeling with the committee. We want to also suggest that there are some more specific and real reasons why women are not treated fairly economically in the work place.

We would suggest that the government, and this committee specifically, might address three specific concerns in dealing with the point that this legislation, validly in its intent but misconceived in its approach, is attempting to address. The first is education. The association would encourage this committee to report back on increasing the commitment of the government to education specifically directed at women and disadvantaged groups. Second, we want to encourage the committee to reinforce the importance of skills training and retraining.

Third, on page 11, we address the concern of child care. The association wants to leave a specific recommendation that this committee recommend an implementation of a refundable tax credit program which would meet the needs of low- and middle-income families in Ontario, perhaps with targeted annual incomes of about \$30,000 year. This program would give single mothers and parents of two-income but low-income homes a greater choice and flexibility in choosing career opportunities and employment goals in Ontario.

I would like to deal directly with some of the specific concerns of Bill 154, unless there are any questions about the comments already made.

The Acting Chairman: I think you should finish your presentation first.

Mr. Keith: Starting at page 13, the first specific proposal for amendments to this legislation that the Retail Merchants Association of Canada leaves with the committee concerns section 4 of the legislation. We feel it does not adequately list criteria for the determination of value. Clearly, the issue of determining value from a bureaucratic point of view instead of by agreement of the parties in an employment relationship is the most radical part of this legislation.

We are all used to government bureaucracies legislating good public policy ideas in other areas of government, yet nowhere do we believe is there such a radical suggestion or change in this legislation as to try by way of government bureaucracy to assess what one job is worth and what another job is worth. The association suggests that concern would be addressed by adding four new criteria to section 4: individual merit, employee productivity, availability of appropriately skilled labour and differential bargaining power.

The first point is self-evident. Employers daily assess and compensate individuals on their own merit. To suggest that is an inappropriate criterion would be somewhat of an insult to unions, management and employees in Ontario.



The second and third points, employee productivity and availability of appropriately skilled labour, are dealt with at page 25 of the green paper on pay equity that the government put out. Both of those criteria are recognized as special factors that go into assessing value and may be the subject either of exemption or adding to the list of criteria to determine how you value a job. We think there is strong basis for that, which is even supported by the government's green paper at page 25.

The fourth point, differential bargaining power, is one that, from the way the legislation is drafted at the present time, cries out to be included in section 4. What I mean by that is under subsection 7(2) of the legislation, you have the interesting provision that after pay equity has been achieved in an establishment, this act does not apply so as to prevent differences in compensation between female job classes and male job classes, if the employer is able to show that the difference is as a result of differences in bargaining strength.

Quite simply, the association says that if, after pay equity, a difference in bargaining power is a valid criterion to determine whether the legislation applies, then clearly one should include that as one of the criteria to determine what is to be placed on the value of a job. In our view, it does not make a lot of sense to say one cannot have the legislation apply after pay equity is achieved on the basis of differential bargaining power, when you have no right to consider that when you assess the value of the job in the first place.

Those are the four specific additions we would ask the committee to consider, and recommend to the government, to section 4 of the present bill.

The second major area that the association expresses concern on is the whole area of fairness and equity not only for employees in the process but also for employers. It seems that if an employer is frivolously or maliciously accused of having violated this legislation, that employer has no right of recourse except to be found not guilty by the Pay Equity Commission.

With great respect to the drafters of this legislation, that is not a satisfactory way to treat employers if you are going to try to treat employers fairly. If the intent of the Legislature is not to treat employers fairly, then perhaps the legislation as it exists should remain. If there is any acknowledgement on the part of the Legislature to treat employers fairly, then clearly there must be some measure of compensation given to an employer who is victimized by a frivolous, malicious or false complaint.

At the bottom of page 14 of our brief, we specifically suggest that in section 24, dealing with the power and authority of the Pay Equity Commission, the commission be given the right to give partial or full compensation for the costs and expenditures that an employer would go through, presumably counsel or other sorts of consulting advice, or other kinds of costs that it would have to pay to defend itself to prove itself innocent. This is, of course, something that exists in the Income Tax Act, the federal statute with which we are all familiar and, more important, in a provincial statute known as the Ontario Human Rights Code.

A recent case, reported approximately a week ago, confirmed that employers on occasion are victimized by false, frivolous and malicious complaints. In that case, the Ontario Human Rights Commission board of inquiry issued an award of costs against the commission for the recovery of the expenditures with which the employer had to deal. Our suggestion is not that



the person complaining frivolously or falsely be required to pay, because that may be seen as a disincentive to forward a complaint at large. We suggest that the commission be the body responsible to reimburse the employer for such a false complaint.

The third point, on pages 15 and 16, is simply that because the legislation applies to employers who have 10 or more employees in the whole province--so if I have an operation in Sarnia and an operation in North Bay with five employees respectively, I am covered by pay equity--we believe that would seem to be a rather harsh kind of minimum threshold for the establishment of who is covered by the act.

Time is moving on, so I will comment that we ask the committee to consider and recommend to the government that employers with fewer than 25 employees be exempted from the legislation because of the additional costs, the additional requirements of job evaluation systems that are traditionally inappropriate in small employers and the kind of other costs and inefficiencies that will be generated and lead to some of the other negative consequences that I touched on earlier in my brief.

The fourth point, at page 16, is that the association asks this committee not to speed up the timetable. It should either leave it as it is or, our submission would be, consider extending it, especially for small employers who will have a more difficult time in dealing with the implications of the legislation.

On page 17, our final submission deals with the constitutionality of the legislation. There are at least four, if not five, specific areas of legal and constitutional concern that lead to our submission that the association ask the government to refer Bill 154 to the courts for a constitutional ruling. Very briefly, the four points indicated in the brief, and a fifth one I will mention, are as follows:

First, there is in the legislation as drafted a presumption of guilt that would seem contrary to section 11 of the Charter of Rights and Freedoms if the charter would be seen to apply to this legislation.

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Second, there is perhaps a reasonable apprehension of bias in that the pay police who may come in and without a warrant, look at documents and assess people as having violated the act would also be able to avoid being witnesses on behalf of an employer if they were to say something favourable, because they have protection of the legislation, but they can appear on behalf of the Pay Equity Commission as witnesses. In other words, they appear as a conciliator to try to settle a case, they appear as the enforcer officer of the Pay Equity Commission and then they appear as the prosecution's star witness.

We have seen that problem in other administrative tribunals, and that kind of reasonable apprehension of bias does cause this legislation, in my view, to be thrown at least in doubt as to whether it is constitutional.

Third, there is an arbitrary purpose of the act that may be questioned under section 15 of the charter. Section 3 of the act says, "The purpose of this act is to redress systemic gender discrimination." That is an assumption that is debatable, to say the least, I think, on the statistical evidence on

the issue, and it may be open to question under the Charter of Rights and Freedoms, section 15.

Fourth, there is also the charter provision under section 1, the reasonable limits provision that, again, causes this legislation to be called into question with respect to its constitutionality.

A fifth point that is not recorded in the brief specifically is that the Ontario Human Rights Code, in subsection 46(2), has a primacy provision. The Ontario Human Rights Code, in effect, is superseding legislation for all other provincial statutes.

Upon a reading of the Human Rights Code, the pay equity provisions of Bill 154 may, in fact, be discriminatory against men and may not fit the exceptions allowed in the Ontario Human Rights Code for a kind of proactive or affirmative action or reverse discrimination--whatever jargon you choose to use--kind of provision.

Because Bill 154 will be subject to the overarching authority of the Human Rights Code under subsection 46(2), there is again more confusion that we, unfortunately, do not have any answers or statements from the government on as to how it feels this thing is going to be resolved legally.

Because of all that, which will sooner or later be raised one way or another if the bill goes through, it seems to make a whole lot of sense to get that cleared up at the outset and simply have the courts rule on its constitutionality.

In conclusion, the RMA feels this is deeply flawed legislation. Although it may have laudworthy objectives, on balance, when one looks at the costs and benefits, it will create certainly much more harm than good, specifically for the kind of small employer members of the association that we represent.

On pages 19 and 20, there are 10 specific recommendations the association would leave with this committee. We are approaching these recommendations, we feel, in a responsible manner, not pretending that problems do not exist but responsibly responding to the kinds of issues that are raised, with the interests of both employees and employers at heart.

The first point is simply that we, because of the submissions already made, urge the government not to proceed with the passage of Bill 154 into legislation.

Second, we would specifically ask--and I do not believe this has come up in this debate yet--that the government review section 33 of the Employment Standards Act and get some sort of reading from the Ministry of Labour as to whether it feels this legislation is doing the job. If the Ministry of Labour feels section 33, if perhaps slightly amended, is going to address and answer the kinds of problems that exist in society and that this bill is trying to address, then clearly that is the more responsible and prudent manner to approach the whole issue, rather than simply to ram through another piece of legislation.

Under point 3, we would ask the government to consider increased resources in education and skills training for women to address long-term-wise the kinds of problems I think this legislation is intending to address.



Point 4 relates to the refundable tax credit. Point 5 relates to the four additions that we would ask be recommended to fit into section 4 of Bill 154.

The sixth recommendation is that there be partial or full compensation for employers who are falsely or frivolously accused with unjustified complaints, as found so by the commission.

The seventh recommendation is that companies with fewer than 25 employees be exempted from the legislation.

Number eight is that the implementation timetable be at least maintained or possibly increased because of the interests of the association and its smaller members.

Point 9, asking for a fuller disclosure of government reports that may question some of the statistical evidence we have been provided with in the green paper and causing us to question not only the degree of the wage gap and the possible causes of it other than the gender question, but also whether the cost on a per person basis is the \$2,000 to \$3,000 we have been told or something more, has already been addressed and dealt with in the media.

Finally, we respectfully request that Bill 154 be referred to the courts.

That is a bit of a whirlwind tour of the brief. It is there in somewhat more detail than I have given, but for the sake of time I thought I had better keep my comments short. Thank you.

The Acting Chairman: Thank you very much, Mr. Keith and Mrs. Blakey, for a hard-hitting, well-prepared and concise brief. We have some time. Strictly speaking, we have eight minutes, but our next delegate has not appeared yet, so we might be able to stretch that a bit. I guess I should not really say that, because I do not want people to get more long-winded on account of that. I am sure you will stick to your usual brief questions and answers.

Mr. Ferraro: I will be very brief. My apologies for not being here for the start of the presentation, but I promise you I will read it.

I have one question and one question only on the point you made about frivolity, not only the time cost but also the economic cost and the mental anguish, looking at it from the employer's perspective when the commission makes a ruling. I just want you to elaborate a little bit on that because I have some concerns in the same area.

My understanding, and yours, I am sure, is that any frivolity would be determined, at least in large part, by the investigating officer before it goes to the commission. Subsequently, when the commission deals with it, I make the assumption--and this is perhaps where you and I have some parting of the ways--that it is not a frivolous topic the commission is dealing with.

Mr. Keith: Right.

Mr. Ferraro: My understanding of what you are saying is that if the commission rules in favour of the employer, there should be compensation. Where I differ with you is that if the commission is dealing with it, I am not saying it is frivolous; you perhaps are. Where I agree with you is that if the employer is vindicated, maybe there should be some compensation.



Mr. Keith: There are a number of issues you have touched on. The basic principle in law that this kind of concept arises from is that a person who has been wrongly charged or sued has a right in our civil courts to recover a part or all of the legal costs he has expended in defending himself. That concept has been transferred to the administrative tribunal's area, such as in the Ontario Human Rights Commission, where if an employer is found to be, in a sense, not guilty of the charge against him, he does not automatically have the right to say, "I want my costs paid for." It is only where the commission would find there is a frivolous or vexatious kind of complaint on the part of the complainant.

Let me give you an example. If I were not to get a raise because I was doing a poor job, and if I did not like my employer as a result and thought to stir up a little bit of fuss or perhaps force an out-of-court settlement, I would complain to the Pay Equity Commission, I would be doing that purely out of a motive to get my employer.

Mr. Ferraro: Spite, yes.

Mr. Keith: You are going to have to assume for the moment in that scenario that I am a woman because, clearly, it is only going to work that way. It is only where the commission itself--a fair, neutral, administrative tribunal--would find not only that there is no basis for the complaint but also that it is ill-motivated. It has been brought only for the purpose of inflicting some sort of cost, perhaps publicity and embarrassment, against that employer.

Just as with the Human Rights Commission--and I have been involved in a number of cases there--the first year of this legislation is going to see a lot of headlines where, whether or not he is guilty when he is charged, the employer is going to seem to be a pretty bad actor. If there is not some vindication process by way of compensation for costs when there is a frivolous claim, then it is very much a one-sided process.

Mr. Ferraro: I understand what you are saying, but where I am having difficulty, perhaps much more so than you, is that it is my understanding that frivolity will be determined in its initial stage by the investigating officer. You are telling me if it is frivolous then, as my colleague says, they obviously will not proceed with it. They will say, "Get lost."

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It may happen. Maybe one out of a hundred cases the commission deals with may be frivolous. I do not know, but I doubt it very much. No system is perfect. But you are saying that in that one exception there should be compensation. Or are you saying you do not have any faith whatsoever in the investigating officer determining whether it is frivolous?

Mr. Keith: Without knowing the investigation officer and understanding the process and his or her motivation, I would never say that. I would agree with you that it is a very small number of cases that are likely to fit into this kind of exemption. That is why we feel it is even more critical. It is not going to be a great hardship or disincentive to bring a complaint, but it is going to protect on occasion that frivolous complaint that does not get screened out by the officer. The officer may or may not screen out the complaint.

I can tell you in dealing with human rights officers that they are very afraid not to let that complaint go all the way to the top, because they will be singled out by the member of the public complaining who will say: "That officer is not doing his job. I have a valid complaint, but he says it is no good."

Mr. Ferraro: "He is in business in his back pocket," or something like that, whatever the case may be.

Mr. Keith: There is an unfortunate pressure put on human rights officers, from what I have seen, to let it go through the whole process, even if they know it is an entirely frivolous complaint, because they will be seen as not giving the person a fair hearing. More likely, it is that which leads to that kind of a complaint going to the commission and not getting screened out.

Mr. Ferraro: I will conclude this very quickly if I may. Is the retail merchants association concerned with compensation for frivolous determinations at the commission stage, or is it concerned with compensation for a vindication of its position at the commission stage?

Mr. Keith: As much as I would like to ask for the latter, it is the former we are specifically asking for. The compensation is a more narrow right.

Mr. Ferraro: Thank you.

Ms. Gigantes: Thank you. I am sure members of the Ontario Human Rights Commission and those who follow human rights cases in Ontario will be quite amazed to hear the pressure on the human rights review officers to bring cases forward.

Mr. Keith: I do not think so, Ms. Gigantes.

Ms. Gigantes: A very small percentage of the applications that are made under human rights legislation in Ontario ever get to a commission hearing.

How many employees do your 3,700 employers have in Ontario?

Mrs. Blakey: I cannot answer that.

Ms. Gigantes: Would you say 85 per cent have fewer than 10?

Mrs. Blakey: Yes.

Ms. Gigantes: If we just did a calculation on that base, what would be the largest employer in your association? What size of firm?

Mrs. Blakey: That is very difficult. Most of them are around five, 10 or 15.

Ms. Gigantes: Eighty-five per cent would be under 10?

Mrs. Blakey: Yes.

Ms. Gigantes: I refer to pages 8 and 9 in your submission in which you lay out all your concerns about the costs that will be associated with the

implementation of this legislation to employers in your association. Let us assume that under the legislation as it exists already 85 per cent of your membership would not be affected by the legislation at all because they would have fewer than 10 employees. If you are looking at the other 15 per cent of your membership, do you think that within that 15 per cent the application of this legislation is going to mean that for female employees there will be a cost adjustment of \$2000 to \$3000 per person required?

Mrs. Blakey: I do not think so, not in private business. I think everybody is pretty much paid on merit today.

Ms. Gigantes: Can we assume the scenario you lay out in pages 8 and 9 about increased unemployment, bankruptcies and so on will not apply to your membership?

Mrs. Blakey: It could very easily.

Ms. Gigantes: Well, it cannot do both.

Mrs. Blakey: I am contradicting myself, but I think a lot of people would not even be knowledgeable and all the legislation actually would be laid out. A good percentage of the membership in private business would not be.

Ms. Gigantes: You are one employer in your association. You have 10 employees and presumably the legislation would apply to you after six years from the effective date. Do you think six years from the effective date you would be found requiring adjustments of \$2000 to \$3000 per person for female employees?

Mrs. Blakey: No, I do not think so, not in my business.

Ms. Gigantes: Then, what are you worried about?

Mr. Keith: First, Ms. Gigantes, I think you are placing Mrs. Blakey in a difficult situation of anticipating what the Pay Equity Commission would do. She may be right or she may not, but it is really up to them. It is not up to her. I think Mrs. Blakey feels she is a fair employer and that she does not discriminate.

Ms. Gigantes: The commission will not do anything, because Mrs. Blakey will not be called upon to produce a plan under this legislation, first of all. It is not the way I would like to see it. I would like to see two years from now Mrs. Blakey asked to produce a plan. I think that for her 10 employees it probably would not be terribly onerous.

Let us leave that aside. In the case that would exist under Bill 154 as it now stands, Mrs. Blakey's business after six years might be subject to a complaint by one of her employees. Mrs. Blakey feels that six years from now there would likely be no basis for such a complaint. We have just gone through the process of what would happen in that case. A review officer would look at the complaint, take a look at the situation in Mrs. Blakey's place of employment and decide there was either a basis for the complaint or there was not. Mrs. Blakey feels there would not be a basis for complaint. So what is the problem?

Mr. Keith: It would seem to me that simply because you are spreading out the cost effect, you are simply delaying the inevitable if the inevitable



is going to occur in any event. If you ask Mrs. Blakey if she felt she was treating employees fairly today, and if the legislation was applied today whether she would violate it, she would feel she is treating her employees fairly and that she was not violating it today nor would violate it six years from now, She feels that is one of the reasons the legislation is unnecessary.

Ms. Caplan: I want to reiterate the same point, that is, 85 per cent of your membership have fewer than 10 employees, so they would not be covered by this legislation at all. For the 15 per cent who would be covered, the requirement would be six years down the road, as you have heard, at which time there would be all the experience that would have accrued. Virtually every job would have been compared and there would be the know-how to assist the small employer with 10 to 15 or 20 employees.

All the 15 per cent of your membership would be required to do would be to show that in their compensation plan there was no gender discrimination. That would only be if there were a complaint. I am having some difficulty understanding what your concern is around the cost of all of this and the intrusion, when it seems to me we are talking about good business practice and good business. I think most of your membership consider themselves good employers and do not feel they discriminate.

This legislation would say to them, "Look at your own establishment with the assistance of the Pay Equity Commission," which would be available through public education with much experience. I am having a great deal of difficulty understanding what your real concern is if you are telling us you are good employers and you do not discriminate.

Mr. Keith: I think that is a valid concern that you have raised within the context of the brief. Obviously, we are here on behalf of the RMA, but the concerns addressed on pages 8 and 9 are not simply just selfish concerns by which we think we will be affected.

If all we were doing here was coming to say, "Just protect our little group and do not worry about the rest of the way things are going to work out", I think we would be somewhat selfish and embarrassed. These concerns of increased unemployment, bankruptcies and the cost of government are going to apply to everybody. They are not going to hurt just employers. They are going to hurt everybody. They are going to hurt taxpayers, they are going to hurt women, in effect, with higher levels of unemployment and in our view they are not going to address the real problems that we suggested at pages 10 and 11 really should be addressed.

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Ms. Caplan: With respect, you are here representing a specific group. You have told us that 85 per cent of your members are not affected by this legislation and you are not sure how the other 15 per cent are going to be affected, except that you believe there is no gender discrimination within the majority of the remaining 15 per cent. You are representing the Retail Merchants Association of Canada. What is the concern of that specific group, since this legislation was designed specifically to understand the problems of the small business person with fewer than 10 employees, and 85 per cent of your membership falls in that category? I am having difficulty understanding your brief. If you are saying you are representing this group but you are really talking for other people, I am having some difficulty in understanding who you are representing here.

Mr. Keith: We are representing who we say we are. I do not want to mislead you. I agree with most of what you are saying. It is a good argument to say the legislation is unnecessary in our view, if you accept what we are saying, that we are fair employers.

The Acting Chairman: Can I break into what is turning into a debate here? We have Mr. Stevenson and Mr. Polsinelli, with Ms. Gigantes straining at the leash in case there is any time left over. I am going to exercise the chairman's prerogative and say you have had your chance.

Mr. Stevenson: I would like to echo the last comment. If Ms. Caplan is accepting the fact that they are good employers, why is the legislation applying to businesses of this type?

Ms. Caplan: It is not applying to businesses with fewer than 10 employees.

Mr. Stevenson: I question item 3 on page 13, the availability of skilled labour. I assume what you refer to there is the market situation and that one of the problems associated with lower pay in some job areas for women is the fact that there has tended to be, let us say, an oversupply of labour in certain areas. You feel that the pay scale should reflect market situations in the availability of labour.

Mr. Keith: That is right. I think that is mainly a geographic consideration. There is going to be much more skilled labour for Mrs. Blakey's shop where she is in Metro Toronto than there probably would be in Cochrane, for example. How that would relate and work out, I cannot really say. It would depend on the situation, the demand and the supply. If it is not included, it takes that whole natural element out of the employment relationship and that is very contrary to what happens right now.

Mr. Stevenson: I accept that point of view.

The Acting Chairman: Ms. Caplan would like a very short supplementary on that last statement.

Mr. Stevenson: May I ask one more and then she can have a supplementary? There are examples where groups will say that women have definitely suffered from what appears to be an oversupply in some areas. I suppose the question is whether women have benefited from an undersupply to the degree that men have in some areas. On the other side of the story, are you aware of situations that you could document where women have been paid more than what the going rate might have been in times recently passed, where they have benefited from a shortage of supply?

Mr. Keith: In the florist industry, I think, Mrs. Blakey is familiar with--

Mrs. Blakey: Yes, with designers, definitely. The women are very highly paid, just as men are. It is production and creativity. They are few and far between really.

Ms. Caplan: The question I have is whether you have a basic understanding of what this legislation has to do with. It does not have to do with supply. It is an antidiscriminatory piece of legislation that looks at a specific individual establishment and asks, "Are you discriminating in your pay practices because of gender?" It has nothing to do with supply or the



availability of labour. In fact, it has an exemption for labour shortages which would deal with that. Do you understand the basic concept of this legislation?

Mr. Keith: With great respect, I do think there is a note of condescension in your question.

Ms. Caplan: No, I followed up on the question.

Mr. Keith: I think the legislation is very plain. Section 3 of the legislation says it is to redress systemic gender discrimination. Even the way you have characterized it is really not correct. There is an implied conspiracy, if you will, in the systemic gender discrimination that this legislation addresses. The Human Rights Code addresses intentional discrimination in the work place. Section 33 of the Employment Standards Act addresses differences between male and female rates of employment for substantially the same work. This talks about value of work. If you are talking about value of work, not to look at the supply or the demand of labour is completely naïve and out of place with what goes on in employment relationships. That is our concern.

The Acting Chairman: Thank you. I will have to say that is enough of an answer at this time. Mr. Polsinelli, a 10-second one.

Mr. Polsinelli: It probably will not take me more than five minutes.

Mr. Keith, it seems we are talking in circles here. Would it be fair to say you do not think the problem exists and you really cannot discuss a piece of legislation if you do not believe there is a problem?

Mr. Keith: I am here as a representative of the association. Whether I think it exists or not is really quite irrelevant.

Mr. Polsinelli: Does the association believe there are gender-based discriminatory pay practices out there in the real work force in the market?

Mr. Keith: Professionally, as I deal with complaints through the Human Rights Commission, there is undoubtedly discrimination on a gender basis that occurs on an individual basis. To assume, though, that employers have created job categories that they fit women into and other job categories that they fit men into and intentionally pay women less than men, which is basically what section 3 of the act says the act is to address, quite frankly, I do not know. We are told statistically by the green paper that must be the case, but there may be other criteria. I understand there are other reports that have not become public that may suggest there are other criteria about that.

Mr. Polsinelli: From my personal point of view, I would not see employers as having created those classifications, but that it is, more or less, a societal problem. This thing has evolved as society has evolved, and certain work has been labelled women's work and traditionally undervalued. What we are doing here is trying to remedy that traditional undervaluation of women's work where the difference in pay is due only to sex.

If we agree that there is a problem, if we agree that we have to do something, then we can talk about the legislation. If we do not believe a problem exists, then I can understand representations saying, "This legislation is totally inadequate." If we agree that a problem exists and that



something has to be done, then if you are representing a firm with fewer than 100 employees, the operative part of the legislation that you should be concerned about is subsection 6(1), which says, "Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer."

If you are a business owner with fewer than 100 employees, that is what you have to comply with. You do not have to prepare a pay equity plan; you do not have to go out and do an analysis. You have to use your conscience and go out into your labour market and to your employees and see whether you are complying with that section. The only time the government will interfere is if one of your employees feels you are not complying with that section, at which point a review officer would come over.

That does not seem to me as if it is unduly onerous or burdensome or as if there are pay police coming out. If we agree that a problem exists, then if you have fewer than 100 employees, that is what you have to comply with. What is the problem?

The Acting Chairman: A very brief response, Mr. Keith, and then we have to close this off.

Mr. Keith: Very briefly, I think there is a great deal of question as to the way the problem has been characterized, and there is a great deal of debate as to the reliability of the statistical evidence. Assuming there is a problem--and I cannot say one way or the other that I have a strong view on whether there is a problem--to say that all the small employer has to worry about is section 1 is somewhat of a misstatement.

The kinds of concerns we have talked about are very real. They will affect members of this association. I do not think it is a façade to so describe inspectors who have authority to come in and basically have full rein of your employment situation, irrespective of your concerns and interests.

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Mr. Polsinelli: But so do employment standards inspectors; so do the Human Rights Commission inspectors. There are many precedents for government to come in through various inspectors and look at your records.

The Acting Chairman: Thank you very much for your presentation. I am sorry to have to be arbitrary here, but we have already spent a lot more time than was allotted. It is good to rattle our chains once in a while. It makes us think about what we really are doing.

Because we have used up the time we thought we had to spare, I think we are probably ready for the next group.

Mr. Polsinelli: Mr. Chairman, may I suggest a five-minute break?

The committee recessed at 11:00 a.m.

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The Acting Chairman: The other members of the committee are taking their places. I welcome the representatives of the Canadian Federation of Independent Business, Judith Andrew and Dale Botting, who have their own respective positions there. Welcome to the committee, Ms. Andrew and Mr.

Botting. We are interested in hearing what you have to tell us. We have your brief and we will try to follow along whether you read it all or give us a summary.

Mr. Baetz: Mr. Chairman, we have no quorum.

The Acting Chairman: We still do not have a quorum. Can we get a Liberal?

Clerk of the Committee: I will try.

The Acting Chairman: Here he comes. All right. Thanks for calling that to my attention, Mr. Baetz. Okay, we are legally constituted now. Please continue.

#### CANADIAN FEDERATION OF INDEPENDENT BUSINESS

Ms. Andrew: Thank you, Mr. Chairman. Our brief is brief and so we will read it into the record, if it pleases the chair.

The Acting Chairman: Yes.

Ms. Andrew: The Canadian Federation of Independent Business believes that however well-intentioned legislators may be, so-called pay equity will create more problems than it solves. On behalf of CFIB's 76,000-member independent businesses, over 36,000 of which do business in Ontario, we appreciate this opportunity to outline the major concerns produced by the far-reaching legislation at issue.

A foundation is about to be set in Ontario labour law that will have serious implications for our competitive labour climate, and yet the numerous building blocks that underlie this structural change have not been publicly inspected. How can all three political parties, as joint builders of this legislation, permit the creation of this new structure without full awareness of its design flaws and potential for collapse like a flimsy house of cards?

Just how can pay equity be made practical for operation in the small business sector? Evidently, the minister responsible for this bill does not know the answer to this question, as he freely admitted in a private meeting, and the government's own team of consultants and officials has not yet found the answer to this question or the results of its studies would have been made public long before now.

The CFIB is heartened by the unanimous resolution of this committee on Monday, February 23, 1987, which supported our request for full disclosure of several hidden impact studies. It is unconscionable that virtually all of the publicly funded studies and reports on this issue have been kept secret. The list includes the recommendations from the Consultation Panel on Pay Equity, three separate studies conducted for the Ministry of Industry, Trade and Technology regarding the impact on small business, and several other reports done for the Ontario women's directorate, including legal opinions on the constitutionality of the bill.

I would add at this point that confidentiality of private information that is contained in the case studies undertaken is a very lame excuse for not releasing those case studies, as long as the identities of the firms involved are disguised.



While we await these materials, we must conclude that hidden studies are indicative of some hidden agenda, an agenda that is merely a clever ploy to buy votes under the banner of a very beguiling term--pay equity. We also feel that some have a hidden agenda that goes further and uses this legislation as a guise for achieving inflated wage adjustments that go well beyond any legitimate concern over gender discrimination.

For example, we note that certain provisions of Bill 154 may imply the extension of employee benefits to part-time workers, an important policy issue unto itself. It is alarming to hear some interest groups calling for cross-firm wage comparisons which in effect could lead to a system of full government wage administration.

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If this committee truly shares our belief in the fundamental importance of informed comment, we suggest that it allow the Canadian Federation of Independent Business and other interveners to reappear once adequate time has elapsed to examine the missing research information. Until then, all of us are operating largely in the dark, without a full knowledge base for analysis and debate. You, as legislators, will also be limiting your knowledge base if you do not allow other interveners to step forward in hearings held outside of Metro Toronto.

For these reasons, our presentation today should be considered preliminary, on the expectation that we will have the opportunity for more detailed input once we have further reviewed the hidden information. The issues we are about to discuss represent some of our major concerns at this point, but there may be many more problems outlined in the unpublished studies and reports and legal opinions which have been hidden both from you and from the public. Once we have seen this hidden government research, we will submit a more detailed, clause-by-clause critique of Bill 154 in what we hope will be a second opportunity to appear before the committee.

At this juncture, I would like to say that we are appearing today under duress. We feel we should have had the opportunity to review all the hidden information, and we would gladly give up one half-hour of today's presentation in exchange for an opportunity to appear later for one half-hour outside of Metro Toronto if that suits the committee. We would like to have a response to that request and a response to the question, has the government indicated whether it will table the hidden information? If those answers could be provided to us before we leave today, that would be suitable.

I turn now to our concerns with the pay equity/comparable work legislation. The prior experience has been negligible. Ontario is venturing into uncharted waters with Bill 154. Legislation of the form proposed for Ontario does not exist in the private sector anywhere in the world. Some jurisdictions have a complaint-based mechanism; others have implemented an evaluation systems approach in the public sector only.

In Canada, the federal and Quebec jurisdictions offer a complaint-based approach, while Manitoba's NDP government has recently implemented evaluation systems in the public service and the broader public sector, except for municipalities and school boards. In the United States, 13 state governments and several county and city governments have adopted the concept for their own employees. There is no private sector experience anywhere which provides guidance on Bill 154. The main features of the legislation have been drawn from the public sector legislation passed in Manitoba, which itself was patterned after the Minnesota law.



Assumption of employer guilt: The proposed legislation assumes each employer is guilty until he or she proves himself or herself innocent. The foundation for this underlying premise is shaky at best. Patterns revealed in statistical averages have no force in the particular case. It is unjustifiable to assume that an individual employer is guilty simply because there is a wage gap between men and women, on average.

The preamble to the legislation says the purpose is to redress gender discrimination. This clever label, which has come to the fore since the green paper on pay equity was published, is part of an effort to market the legislation, along with the beguiling term "pay equity."

The government's green paper contained an analysis of the components of the wage gap. The document noted that the 38 per cent gross gap in wages between men and women, recently estimated at 36 per cent, would be reduced to 22 per cent by simply adjusting for hours worked. It suggested further that a pay equity policy could address 10 to 15 percentage points, the portion attributable to job segregation.

In other words, the proposal is designed to correct for the fact that women are not integrated across the range of occupations and are instead crowded into some 20 of about 500 available occupational categories. It is an attempt to deal with a symptom of the problem, the lower average pay that has resulted from female overcrowding in certain jobs.

To state that the legislation will redress gender discrimination is to imply that employers are responsible for occupational segregation. This is simply not true. Women are concentrated in certain occupations largely because of uninformed choices, and early socialization, education and training have a role here, or because of informed choices; they may be balancing other responsibilities.

Arbitrary rules to replace market forces: Bill 154 proposes that pay setting be divorced from market factors, except for a modest exception for skill shortages to be allowed upon justification. Other items which would normally be part of the primary wage setting criteria, such as seniority and merit, will require justification and proof that they are not a result of gender bias.

The United States Commission on Civil Rights noted in its June 1985 recommendations:

"The setting of wages is not, and cannot be, divorced from the forces of labour supply and demand. These factors heavily influence the setting of pay in many jobs and play an important role in setting wages for virtually all other jobs. Merit, seniority, quality or quantity of production, and collective bargaining also affect wages."

Job evaluation systems, which purport to measure the worth of jobs by considering skill, effort, responsibility and working conditions, will be the primary tool for determining value. With respect to job evaluation, in its June 1985 report, the US Commission on Civil Rights noted:

"Job evaluation studies, which would play an important role in the implementation of comparable worth doctrine, are inherently subjective. They cannot establish the 'value' or 'worth' of a job. Rather, they are used to establish rational pay setting policies within an organization, satisfactory to the organization's employees and management. Further, they work only with

reference to the external market of labour supply and demand as well as internal factors." -

Evidence continues to mount that job evaluation systems produce inconsistent results. A recent study comparing various state plans showed enormous variations in the relative worth of the same jobs in different states, concluding that the comparable worth concept is riddled with bias and arbitrariness. The comparisons revealed that a secretary would be ranked first among three jobs in Washington state and Iowa but last in Minnesota and Vermont. A data entry operator would place first in Minnesota but third in Iowa, while Vermont and Washington would rank the job second.

Another study concluded that "the feasibility of using job evaluation results as the governing criterion of the relative worth of jobs is highly questionable." Results of two investigations found that in the best case there was only about a 50 per cent probability that two raters, using the same job information, would produce the same classification decisions. In the worst case, the per cent of classification agreement was only 38 per cent.

With those kinds of odds, it is no wonder that the author remarked, "Nonbiased job worth measurement is impossible; the central issue in determination of the criteria of worth is one of determining whose values will be reflected in the plan."

Pay regulation and smaller firms: It is the view of the Canadian Federation of Independent Business that job evaluation schemes, even discounting their weaknesses, cannot be used successfully in smaller firms and that an outlay of several thousands of dollars for a package scheme would be wasted. Job tasks in the small firm are usually quite fluid, with the owner-manager and the staff performing whatever is required at the time. Versatility is the hallmark of small firm employment. For this reason, job duties in small business are not usually written down in the form of a job description.

CFIB's Ontario provincial survey data, appendix A in the brief, were collected in April 1986 and show that almost 80 per cent of all small business respondents and nearly 90 per cent of the smallest businesses have no job descriptions whatsoever. Only one fifth of the larger respondents to the survey have job descriptions for all personnel. We expect those firms have attained a stage in their growth in which jobs are more stable and a management structure has developed to include a personnel function. The majority of small firms would not have or could not afford the luxury of having a formal personnel department or even a personnel specialist.

Clearly, smaller firms have fewer resources to deal with the monitoring agency bureaucracy. The time and cost of defending a pay challenge will be prohibitive and the chance of succeeding will be negligible. It will be extraordinarily difficult to prove evenhandedness. Monitoring agency employees will understand that their objective is to achieve significant pay increases for women. Employers will pay the required sum if they can, or they will lay off employees, shut down or replace workers with capital equipment if they cannot.

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Our recommendations:

1. CFIB recommends the retention of the elements of regulatory flexibility currently in Bill 154. These include the threshold level, different compliance requirements and the phase-in.



In the United States, the Regulatory Flexibility Act requires federal agencies to consider establishing different compliance or reporting requirements, timetables or exemptions to take into account the resources available to small entities.

It is clear that job evaluation techniques, upon which pay equity/comparable worth relies so heavily, are designed for large organizational structures with formalized personnel systems. As such, they are inappropriate and unwieldy for the majority of small firms. Moreover, as we noted previously, smaller firms simply do not have a phalanx of lawyers, personnel specialists, etc., at their service to deal with even the existing regulatory agencies. Proportionately, the cost to smaller firms of compliance is significantly higher because compliance demands the attention and valuable time of the owner-manager.

In the case of this legislative requirement, which by its nature has to be ill defined--that is, the only way to implement is to vest broad discretionary powers in the monitoring agency--the uncertainty and potential difficulties for small firms are far worse.

2. CFIB recommends that the government refer Bill 154 to the Ontario Court of Appeal for an advance ruling on its constitutionality. Legislators and others must have certainty, prior to enacting such far-reaching legislation, as to whether several key elements of Bill 154 will withstand the inevitable court challenges. We would be dismayed if, for example, the principle of an exemption for smaller businesses evaporated in a constitutional challenge following proclamation.

3. The threshold level, currently at nine employees, should be increased to at least 50 employees. CFIB's survey data on job descriptions show a break at the 50-employee level. Again, this is in Appendix A. In the 10-to-19 size, 75 per cent have no job descriptions; for the 20-to-49 size, some 70 per cent do not write down job duties; and beyond 50 employees, the level stabilizes at about one half.

Obviously growth patterns of firms vary enormously. Some firms may be quite stable at 50 employees; others, in a high-growth mode or facing rapidly changing market conditions for their products, may be in flux at that level. Legislators must be mindful of the possibility that an excessive regulatory burden could stifle the growth and production of jobs in these budding firms.

We also draw your attention to the employment equity legislation at the federal level, which provides for a 100-employee exemption. By comparison, the requirements contained in Bill 154 are significantly more complex.

4. The phase-in provisions are the minimum necessary and should be retained. The anniversary dates should be viewed as checkpoints rather than as deadlines. We regard this legislation as experimental, given that there are no private sector examples anywhere. The phased approach allows for the development of an experience base. There should be serious analysis at each stage, and the government should be willing to alter the timetable and, if necessary, the legislation, in accordance with the findings.

5. A Pay Equity Commission of Ontario should not be created; the legislation should be administered by the employment standards branch of the Ministry of Labour. There is no justification for creating a separate bureaucracy that would undoubtedly grow to large proportions. A one-purpose agency would also tend to justify a continued existence long after it had



accomplished its main objective. Such a body would be perceived as being dedicated to raising women's wages by whatever means. Assigning this function to the employment standards branch would serve to balance this requirement with several other standards which must be met.

6. The legislation should provide for the reimbursement of the employer's costs when his or her case is vindicated. Costs should be paid from the monitoring agency's budget. This measure is necessary to counter the reverse-onus test in Bill 154. If an employer is considered to be guilty until he or she proves his or her innocence, then at the very least, the costs of defending a complaint must be reimbursed. We have been informed that legal and consulting expenses could be in the range of \$50,000 to \$100,000 to defend one complaint.

7. The legislation should provide for a minimum incumbency level of 10 for the purpose of defining a job class. The objective of the legislation is to address the pay differentials which arise because of excessive clustering of women in so-called pink-collar ghettos. A group should be of sufficient size to make the predominance test meaningful; 60 per cent of one incumbent is a ridiculous test. Manitoba adopted the 10-person test using the Minnesota example.

That concludes our remarks, and if it pleases the committee, we could adjourn after our half-hour is up and reappear at a subsequent hearing once the secret information is brought forward.

The Acting Chairman: Thank you, Ms. Andrew. Ladies and gentlemen, I think we should deal with this request from the presenters before we get into a discussion. The request is that they would be pleased to save half an hour of their allotted time to appear after the government studies have been released. What is the feeling of the committee on that? Do you want to make that kind of commitment now? I will be guided by what the members decide.

Ms. Gigantes: Do we have an indication from the parliamentary assistant about the potential for release of said hidden studies?

The Acting Chairman: There is a good question.

Mr. Ward: As I indicated to the committee yesterday, the request is for legal opinions that may have been rendered internally. I indicated at that time that those are protected by solicitor-client privilege, and I would find it unlikely that we would waive that privilege.

Reference was made to some secret studies, reports or recommendations that, to my knowledge, do not exist, particularly in relation to the consultation panel. There were studies that were done through the Ministry of Industry, Trade and Technology; there were other studies that were done that involved proprietary information in terms of specific case studies. I think it would totally inappropriate for those to be released.

However, all the material that is within the directorate in relation to background studies is being assessed in the context of what can be released on reasonable grounds, and I would be happy to report to this committee--I would hope to do so some time today--as soon as that assessment is complete.

Ms. Fish: Did I understand you to say the government is not prepared to release recommendations or consultations now on pay equity?

Mr. Ward: They have all been released.

Ms. Gigantes: That is not correct.

Ms. Fish: I am sure that is not entirely correct.

Ms. Gigantes: That is not quite a fair description. There were no recommendations; so there was nothing to release.

Mr. Ward: Any reports that were done by the panel were released.

Ms. Gigantes: There was a report, but there were no recommendations in the report.

Mr. Ward: There was no requirement on the part of the panel to make recommendations.

Ms. Gigantes: They indicated during the course of their hearings that they would be making verbal recommendations to the minister. There are no tapes of those verbal recommendations.

Mr. Ward: Not to my knowledge.

Ms. Gigantes: Would you check that for us?

Mr. Ward: I would be happy to do so.

Mr. Baetz: The parliamentary assistant suggested it would be inappropriate to release one of the reports. Why?

Mr. Ward: Legal opinions that are rendered to the ministry are protected, I believe, by solicitor-client relationship, and I have indicated that I would have some difficulty in suggesting that be waived.

Second, case studies involved specific corporations whose confidential personnel and wage data were used in their preparation. They were undertaken on the basis that the information was being provided in confidence, and I believe it would be inappropriate to violate that confidence.

Mr. Baetz: Could that information not be released by taking away any identifying information?

Mr. Ward: As I have indicated, all the reports that are available within the Ontario women's directorate are being assessed on that basis, and we will be responding today.

Ms. Fish: That does not deal with the separate studies undertaken by MITT.

Mr. Ward: Yes, it does; it includes those.

The Acting Chairman: Are we going to have a written response?

Mr. Ward: I do not know. I do not want it delayed any further. It will be a written or verbal response.

The Acting Chairman: Verbal confirmed by a written response.

Mr. Stevenson: Surely there must be some summary tables or some data that can be put together in a form that will not be recognizable as from any particular firm or group of firms. That information could be released to the committee.

1130

Mr. Ward: Whatever data can be released, I assure you will be released. I am not so sure you would want material to be edited, but you will have to recognize that things such as legal opinions will not be released.

The Acting Chairman: I do not think we are asking for legal opinions, are we?

Ms. Gigantes: Yes. There is a request for the legal opinions, not from us but from presenters to this committee.

The Acting Chairman: I know the presenters are indicating they wish to say something. I want to make sure the committee has had a chance to consider what it wishes to do about their request to having a second shot at the cat, if and when we get this material.

Mr. Ferraro: As much as I think they should be given another opportunity and would support that suggestion, I think the real issue for the committee is that the same opportunity has to be given to all who have made previous presentations. Then the committee has to deal with, in essence, the time allocation we have, which is somewhat limited. I am not sure the committee can resolve that problem today, whether we are going to ask for more time, because I do not think we can, whether we are going to ask for written presentations or whether we are going to say arbitrarily that a particular group should come in and make a presentation. I am not sure we can answer that question today, in the next 10 minutes.

Mr. Ward: No. On that point, and I think Mr. Ferraro does make an excellent point, I am just a little concerned to what extent reports such as that may or may not have an impact. It is not that this is a new topic; it is not that there have not been studies and reports over the course of the past four years; and it is not that any of those reports is necessarily definitive in any way. You will be able to assess that information on the basis of what is presented. It just seems to me that consistently what we hear is that we need more time to study.

We are taking a considerable amount of criticism from many groups and individuals within this province over the amount of time it has taken to study all of this. Although I can recognize the Canadian Federation of Independent Business's specific concern about some specific information that hopefully it might find helpful, I am not so sure that holus-bolus we have to continue to say, "Let us keep studying; let us keep reviewing other studies." I am not at all convinced that accomplishes anything other than an unnecessary delay.

Ms. Fish: I am not interested in an endless round of report, data submission, review, analysis; report, data submission, review, analysis; report, data submission, etc. I do, however, think it is more than reasonable that the ministry move with dispatch to release the information. I hope this afternoon's announcement is not by way of a progress report but is by way of tabling material, and that at the very latest we will have the material promptly tomorrow.



I also note that written submissions have been invited generally to the committee, and I hope that with the likely two-week pause in our formal schedule between the travel week and the clause-by-clause debate, we would at the very least have a circumstance where the material would have been released in good faith by the ministry. I know the ministry would want to act in the best possible faith in providing the information and not in itself unduly delay its release. We would then be able to afford an opportunity for deputants such as CFIB and others to review that material and make additional submissions in writing.

I would like to reserve the question of whether we schedule time to hear further submissions. I am advised by the clerk that there may be a window in some of the existing hearing dates. We will not know that for another couple of days. I think it reasonable that if the ministry will move quickly to release the information, we can at the very least look to written submissions and we may be able to look at some further presentations if there is an adequate window.

The Acting Chairman: That sounds to me like a reasonable compromise for the time being.

Ms. Fish: It does, however, hinge on the willingness of the ministry to release the material in a timely way.

The Acting Chairman: Is that generally agreed by the members of the committee? We wish we had the stuff yesterday, but as long as we get it today this will be feasible. In view of that, Ms. Andrew and Mr. Botting, are you content to continue with your time now, taking the bird in the hand, that is, allowing us to question you and make your submissions?

Mr. Ferraro: You had better give them a guarantee.

Ms. Andrew: Could we make a couple of comments?

The Acting Chairman: On the basis of your request?

Ms. Andrew: On the interchange that just happened.

The Acting Chairman: Yes.

Ms. Andrew: Concerning what reports are available, I know for a fact that a consulting firm named Blackhurst van Beinum and Associates was hired to do work for the Ontario women's directorate, so there is at least one impact study there. The Premier's advisory committees had reports prepared for them. Those should be available. I fail to understand why a solicitor-client relationship should be put forward as a reason for not giving out the legal opinions, given that it is the client who has the opportunity to release the legal opinions.

I would also point out that we requested an opportunity to appear outside of Toronto for this very reason. We wanted to have an opportunity to look at the studies. We were told by the clerk's office that the decision to travel was not going to be made until March 6, which would have meant we would not have had any opportunity to appear.

Those are my comments.

The Acting Chairman: Thank you. Mr. Ward, I think, wants to have one comment on that before we get into questions.

Mr. Ward: As I indicated, certainly as the client, the government could choose to waive its privilege. Frankly, I really have difficulty in understanding why that should be done in this circumstance or in any other circumstance.

Any piece of legislation that is formulated here, and I know other members of the committee will be well aware of this legal opinion, when information is sought, you put together the legislation on the best available advice that is at your disposal. Consistently, when they see legislation they disagree with, groups want a referral under the Constitution or whatever.

I do not think that is the job or the function of any government or any Legislature. I think it is our job to put together legislation we are satisfied is constitutional and appropriate. Therefore, I frankly cannot condone waiving that privilege. You have a recourse and an option, as does any other citizen on any other piece of legislation.

The other thing I want to make clear is that the reports and studies that were done for various ministries, whether it was during the course of the interministerial task force, for the Ontario women's directorate or for the Ministry of the Attorney General, are information and studies that any government would seek in terms of the formulation of its policies and its legislation. Under existing practices, we are under no binding obligation to release that information. The assessment that has been done has been done not under any existing policies or practices but under the spirit of proposed legislation that is yet to be enacted in this province. I want to make that clear.

The Acting Chairman: Thank you. We will go to questioning then, on the understanding that we will as a committee consider what will happen on the particular request after we see what the government releases.

Mr. Polsinelli: Ms. Andrew, as you know, it is always a pleasure for me, and I think for this committee, to listen to you and your organization. Given that we do not have the time restraints, I also support your coming back and addressing us again.

I want to expand perhaps on one of the items you brought up in your presentations, and that was the cost to small firms of complying with the legislation. As I am sure you are aware, the only responsibility that a firm with fewer than 100 employees would have would essentially be under subsection 6(1) of the legislation, which says it must "maintain compensation practices that provide for pay equity." They do not have to file a pay equity plan; they do not have to do anything except to respect that line that says they must "maintain compensation practices" that comply with pay equity.

The only time the government will interfere or that it will have any further requirement is if one of the employees files a complaint. If the employee files a complaint, then a review officer is sent by the commission. The review officer will try to mediate a settlement between the complainant employee and the employer.

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Mr. Ferraro: That is for from 10 to 100 employees.



Mr. Polsinelli: Right. If the review officer cannot mediate a settlement, then the review officer will issue an order to the employer saying that, in his opinion, certain things have to be done to remedy the discriminatory pay practices in the establishment. At that point, the employer will have an opportunity to appeal to the Pay Equity Commission of Ontario.

It seems to me that if we are looking at what the cost to the employer will be of complying with this legislation, it will not really be there unless he has to defend his position before the Pay Equity Commission after an employee has filed a complaint. What other costs do you foresee?

Ms. Andrew: Basically, you have underlined the reason we made our first recommendation, that is, that the differing compliance requirements for the under-100 are something we want to see maintained in the law. I do not think the possibility of complaint will be as remote as you seem to think it will be. Given that we have been told the cost of defending that complaint can be substantial, we are very concerned about the reverse onus on a firm to try to prove innocence and to use the firm's own resources to the tune of \$50,000 to \$100,000 trying to prove innocence on one complaint.

Granted it will not hit every firm, but those firms it will hit will pose significant costs, because it will involve always the owner-manager and take the owner-manager's time, efforts and attention away from the business.

Mr. Polsinelli: I can see costs of \$50,000 to \$100,000 if I am looking at an operation of maybe 1,000 employees where a severely disputed pay equity plan has been filed and the bargaining agent has objected. In that type of situation, you may have costs--and I am just guessing--of over \$50,000. But in the situation where you have fewer than 100 employees, which is small business as defined by the Ministry of Industry, Trade and Technology--a general definition of small business--then the purpose of the review officer, one of the mandates the review officer has, is to go into the establishment once a complaint has been filed and try to mediate a settlement, almost like an arbitrator, try to reach a conclusion between the employer and the complainant employee.

If the review officer is successful, no costs will be incurred by the employer. If the review officer is not successful, then the employer or the employee will have to defend his or her position before the Pay Equity Commission. As I understand it, the commission is going to be established in such a sense as to allow for informal representations similar to how the small claims court operates in the province. When we are talking about \$50,000 to \$100,000 for the small firms, that is a wild stretch of the imagination. It is just not realistic.

Ms. Andrew: That is the estimate we have for defending on one job. If it is less than that, it will be a disservice to the small firms because the onus is on them to prove their innocence.

Mr. Polsinelli: It costs a claimant in the small claims court maybe \$400 or \$500 to have legal representation before the small claims court. If the Pay Equity Commission is established the way the small claims court system is established in Ontario, if you have a similar type of situation, how can you tell me it is going to cost \$50,000 to \$100,000? On what basis is that estimate taken?



Ms. Andrew: In the small claims court, you take in your documents and show those, if it is a business transaction. What we are talking about here is probably having to work out some kind of evaluation system that will prove your point. Evaluation systems do not come cheap; they are estimated to cost between \$300 and \$500 per employee. If you are talking about 50 employees, it is a significant cost.

Mr. Polsinelli: No, I disagree with that. It is not per employee but per job class.

The Acting Chairman: Mr. Botting would like to make a comment there.

Mr. Polsinelli: Just before Mr. Botting makes a comment, when we are talking about the cost of developing an evaluation system, the cost is not per employee; it is per job class. For every class of employees the employer has, he may incur a cost of \$300, but not per employee.

I submit that in a firm with fewer than 100 employees most of that legwork is going to be done by the review officer because that is going to be his job. He is going to go in there and try to reach a settlement between the two parties, so that when you go to the Pay Equity Commission, you may be disputing two or three points in the review officer's orders.

Ms. Andrew: Obviously, we disagree on that point.

Mr. Botting: If I may further comment, I would like to go beyond the issue of direct costs before tribunal proceedings. We still think that may be significant and that the small claims court model may not be the appropriate model. Perhaps you may want to look at the costs incurred, for example, in the Workers' Compensation Appeals Tribunal or in the Ontario Labour Relations Board process which, by the way, appear much more to be the model by virtue of the tribunal proceedings than the example you used.

I would like to go beyond that, because our other concerns with a complaint-based system include a kind of a whipsaw action that bothers us a great deal. It relates to such sections of the act as the intimidation clause, which is section 8, and the time requirements that kick into place once a complaint is levied. We are concerned about vexatious or frivolous requests and during the time that such a request comes. If, for example, it comes through a hidden agenda or if there is technological change in the work place, a departmental reorganization or a firm restraint, we note that the employer's hands are somewhat tied. Certainly, the intimidation clause is very confusing to us, and that is of great concern.

We also have to express some reservation about the power of the review officer to have the wisdom to determine what is always vexatious or what is always frivolous. In any event, even if the review officer is on our side, the employee still has the right to take the complaint further to the Pay Equity Commission, so it is in those areas as well that we have some serious misgivings.

Mr. Polsinelli: You raise some issues that are worthy of discussion. However, what I wanted to address was the point in your submission regarding the cost to the small firms. If we wanted to go into the intimidation section, I would submit to you that it is necessary, because we do not want an employer to fire an employee for having complained. In terms of the vexatious section, the review officer can determine under section 22 that a complaint is vexatious and just fail to proceed with it.

The powers of the review officer are very similar to the powers that the officers under the Ontario Human Rights Commission or the employment standards branch already have. Those are not issues I wish to discuss. It was the cost factor.

The Acting Chairman: I am sorry I have to cut you off there, but we have four other people here.

Ms. Gigantes: You referred to the number of businesses associated with your federation doing business in Ontario as 36,000. I guess we can read from appendix A the sizes of those businesses, roughly speaking. We do not get an indication from appendix A how many employees would be represented by those 36,000 firms doing business in Ontario. Have you any estimate?

Ms. Andrew: I think it is more than a million employees.

Mr. Botting: I believe our average firm size is about 15 employees per member.

Ms. Gigantes: Would you have any estimate of how many of those would be women?

Ms. Andrew: The proportion is approximately the same as labour force data.

Ms. Gigantes: About 40 per cent.

Ms. Andrew: Yes.

Ms. Gigantes: Could I ask again about appendix A? You have made a recommendation to us that Bill 154 not apply to firms that have fewer than 50 employees. If I run my finger down the column that divides 20 to 49 employees and draw a line down there, which would be your proposed cutoff point, and I add up the figures at the bottom, which are the total number of firms that would be excluded--this would be the total percentage or the percentage of the total--I come close to the figure that 90 per cent of the firms you represent would therefore not be covered by the bill.

Ms. Fish: Could I just ask you to walk through how you did that on the chart, because I lost you?

Ms. Gigantes: Yes. I draw a line between the columns 20 to 49 and 50 to 99. I add up the totals at the bottom. When I do that addition, I come to the conclusion, if I am reading these figures correctly, that about 89 per cent to 90 per cent of the firms represented by your organization, under your recommendation, would not be covered by this legislation.

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Ms. Andrew: Ms. Gigantes, I think you know the business population in Ontario. The profile is quite small; 68 per cent of business have between zero and four employees, and some 85 per cent have fewer than 10 employees. In this calculation for our own membership, up to 49 employees at 90 per cent is approximately correct. Yes.

Mr. Ferraro: Ms. Andrew, thank you for your brief. I understand many of the apprehensions the CFIB projects. All too often, businesses, small businesses in particular, are perhaps inadvertently portrayed in a bad light.



I am not always convinced, however, that the apprehension as experienced and indicated by a lot of associations is perhaps as great when one understands the real implications. I suppose the determination of emphasis is somewhat diverse, depending on what understanding you want to place on what is the intent and what is the outcome.

My question is a very general one. The reality of all the legislation appears to be that there is an injustice and there is discrimination based on gender in certain employment in certain businesses. Obviously, the government feels there is that inequity, to say the least.

When I listened to CFIB in its very well organized criticism of the proposed legislation, I started thinking to myself that if it is that bad from its perspective, then there has to be another way of getting at the problem. Do you think there is a problem? If there is a problem, how would you handle it?

Ms. Andrew: Yes. There is a problem. The wage gap of a gross amount shows up in the statistics. A good portion of that gap is explained, but 10 per cent to 15 per cent relates to the fact that women are concentrated in certain jobs. The way of getting at that problem is to try to find ways to better integrate women across the range of occupations. Whether it is through improved education and training, better guidance at the schools--there must be a whole variety of reasons. Certainly, women balancing family responsibilities has an effect. They work shorter hours in general and that accounts for some 16 per cent of the gap. If it is family responsibility that causes them to work shorter hours, that is perfectly understandable.

The government can never hope to solve the whole wage gap until there is a point at which family responsibilities are shared equally between men and women. That will happen in the home, and not by government legislation.

Mr. Ferraro: You make a lot of sense on that, but it appears to me that what you are saying there is going to take a considerable amount of time.

Just to conclude, how do you deal with the situation in this case where a significant proportion of women are being discriminated against on the basis of gender? How do you deal with it immediately; that is, the problem areas that exist now? What you have alluded to is a good resolution for five or 10 years down the road, but I am wondering how you deal with it now.

Ms. Andrew: I do not accept that they are being discriminated against. They are concentrated in certain jobs for a variety of reasons. The way to attack it is to help women enter other occupations. More and more women are starting their own businesses. They are starting businesses at three times the rate of men. In the mid-1960s, they represented 11 per cent of business proprietorships. That percentage has now increased to almost 30 per cent. That is a very good indication of women taking charge of their own lives and doing very well at it.

I would like to see the government support that kind of positive initiative rather than this very penalty-oriented type of legislation.

Mr. Botting: I will put that in another term just to supplement what Ms. Andrew said. What we are talking about here is the source of the problem being to a very large degree labour market mobility. It is an issue which is not just gender based, but certainly there is a gender problem in terms of female mobility within the labour market. There is no question about that. We



have noted in our most recent survey of our members--a census, in fact, we took of our own membership in the last half of 1986--that in Ontario, 45.8 per cent of our members identified a shortage of qualified labour. I presume that would include not just male labour but female labour.

We have a labour market mobility problem here. Some of it may be systemic in terms of tradition, of perhaps some discrimination from a pejorative sense, but that is in the area of affirmative action and other measures to address that, not in terms of this bill. I think that is a very fundamental point. The cure is to improve female labour market mobility. I wish there was a quick fix on that, but I do not think it is a quick fix but it is something we all have to be very serious about.

Mr. Polsinelli: Can we have a supplementary on that?

The Acting Chairman: Mr. Ward has asked for the floor.

Mr. Ward: If that is your position, then you see as the alternative a legislative employment equity approach with fixed quotas.

Ms. Andrew: I really do not believe that government can do a great deal to alleviate the problem. I think the advances that women have made in recent decades have stemmed largely from their own initiatives in seeking higher education, in training and in breaking into the nontraditional areas. The advances they have made have not been at the hands of government. To think that government can correct societal problems is naïve.

Mr. Polsinelli: Just a quick supplementary, Ms. Andrew. It seems to me that in response to Mr. Ferraro's questions, what you have really said is you do not believe there is so-called women's work that has been traditionally undervalued. You do not believe that secretaries can be compared to parking lot attendants. Even though the responsibilities, training and education of a secretary may be greater than a parking lot attendant, it is all right if the parking lot attendant earns \$2 an hour more.

Ms. Andrew: Value is in the eye of the beholder and if positions have been overcrowded by a certain sex then that is the reason those positions are paid less.

Mr. Polsinelli: So you do not believe a problem exists.

Ms. Andrew: Not at all. I believe that women ought to have a better opportunity to integrate across all the range of jobs available.

Mr. Polsinelli: But that is not the issue.

Ms. Andrew: That is the issue. You are taking a Band-Aid approach to the problem.

Mr. Polsinelli: No one is saying women should not become doctors or lawyers, but that is not the issue.

The Acting Chairman: Mr. Polsinelli, we are starting to have a debate here instead of a question and answer. This was all supplementary to Mr. Ferraro's question.

Mr. Ferraro: I just want to conclude with a very general question, for which I think I know the answer. The whole problem of apprehension--the

CFIB is afraid that government is interfering in something where it should not stick its nose in, and obviously the government thinks it would have a responsibility, if I can use the verbiage, to stick our nose in it in this case.

I think what bothers me as an individual and a small business proponent, to say the least, is the extreme optimum positions developed by associations and government. We have to deal with that reality. The other reality which causes me concern is that business people in general are getting a bad rap. The reality is there are some rotten employers; there are some rotten employees. We all know what people think in general, and there is probably a consensus as far as government is concerned.

My question is, must we always have that degree of adversarial position or, notwithstanding the fact that you do not think we should have the legislation, could you ever see CFIB getting into a position where it is going to--and I admit it is part of your job--criticize government, because that is very important? On the other hand, could they be in a position where they are going to want to assist in really explaining, as has Mr. Polsinelli, what are the ramifications to small business, or do you see that as part of your mandate?

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Ms. Andrew: We do our very best to provide whatever information we can, and it is not that we take an antagonistic position on every initiative of government. As you know, we have supported the Liberal government in several of its initiatives, including the recent beer and wine legislation and others. We bring forth whatever information we can to shed light on the issues at question. Our feeling from the information we have on so-called pay equity is that it is a very negative thing and it will have serious ramifications that have not been properly explored. If they have been explored, the studies are not being put on the table.

Mr. Botting: I think it is important to note we are not obstructionist or confrontationist by nature. Where we conceptually agree with something--in the area, for example, of skills training, labour market adjustment and labour market mobility--we have worked in conjunction with other agencies on such things as strategies under the Canadian Jobs Strategy. We are championing the need for developing skills training that is sensitive to the demands of the marketplace. We have been very proactive in those areas. Here, however, we still see some conceptual flaws.

As far as we are concerned, the real gap is not a wage gap; it is an information gap and a gap in the way people are interpreting the information. Going back to Mr. Polsinelli's question, everybody can see that the data say there is a gap; that is not at issue here. It is the interpretation of what causes that gap. That is an information gap that I am afraid still exists in this room and, quite literally, even exists in terms of the lack of studies forthcoming from the government at this time. It is an information gap that we feel is the fundamental problem at this time.

Mr. Ward: You concede that a wage gap exists; you question what causes it. Do you believe that gender discrimination causes part of the wage gap?

Ms. Andrew: These statistics that were produced in the green paper indicate that gender discrimination is responsible for about five per cent of



the gap. That is apparently resulting from, even in 1987, equal pay for equal work not being applied. That we disagree with; in the case where it is equal work, we think women and men should be paid the same wage. If there is a portion of the gap that relates to that, that is unfortunate and should be corrected.

Mr. Ward: With the large increase in women entering the labour market and the fantastic changes in terms of the education and training that have been going on, in 17 years the gap has decreased only four per cent. I have a lot of trouble believing that market forces by themselves are going to correct the gap.

On the one hand, you are saying you should try to solve the gap through affirmative action programs, and I think you would agree you would be the first people who would be before this committee if legislative employment equity programs came into place in the private sector. I really cannot get a handle on what your position is in terms of how the wage gap should be redressed.

Ms. Andrew: The reason the gap has not decreased in a period of time is that women are still largely responsible for the home and the family. It is only when that situation changes that the wage gap will diminish significantly.

Mr. Botting: Also, in the numbers you just gave us we have to look at the data. I do not know if you have rolled in part-time work and a deliberate choice by women; to a large degree this does happen, whether or not they have deliberately chosen part-time work. That is part of the gap numbers again; it is part of the information gap.

Furthermore, yes, there is systemic discrimination. There is systemic discrimination when the teacher of my daughter tells her she should be a nurse and not a doctor or when she tells my daughter that she has to be a secretary and not a lawyer. That is systemic discrimination. We cannot deny that; we know it exists. That is the real root of a lot of the problem we are talking about today.

Mr. Ward: If I can get back to a situation where in a university or a municipal setting a gardener is getting paid \$6 an hour and a stenographer is getting paid \$4 an hour, that is clearly just a result of education, training or socialization.

Ms. Gigantes: What do you say to your daughter in that situation?

Ms. Andrew: I guess the daughter should become a gardener.

Mr. Ward: I do want to point out that the figures on the wage gap do not include part-time workers; it is full-time.

Ms. Andrew: I would like to answer Ms. Gigantes's earlier question with the accurate information. That is, I was more than double the estimate. It is approximately 400,000 employees.

Ms. Gigantes: Instead of a million?

Ms. Andrew: Yes.

Ms. Gigantes: Do you still make the same estimate of the number of female employees in that group?



Ms. Andrew: Our membership is very similar to the labour force by composition.

The Acting Chairman: That is almost exactly the allotted hour since we resumed at 11:05. Thank you for your good answers and your presentation.

I remind the members of the committee, before we all depart, that we have a full afternoon. Please be here, at least one from each caucus, so we can start right at 2 p.m.

The committee recessed at 12:05 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, FEBRUARY 25, 1987

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Ferraro, R. E. (Wellington South L) for Mr. Knight

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Ontario Nurses' Association:

Lynn, G., President

Slattery, G. C., Chief Executive Officer

Lawrence, W., Research Officer

Beggs, D., Research Officer

From the Federation of Women Teachers' Associations of Ontario:

Dewey, C., President

Roycroft, M., Executive Assistant

Sigurjonsson, K., Deputy Executive Director

From the National Citizens' Coalition:

Somerville, D., President

From the Ontario Women's Directorate:

Todres, Dr. E., Assistant Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- Wednesday, February 25, 1987

The committee resumed at 2:01 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

The Acting Chairman (Mr. Dean): I will consider that we have one person from each caucus here even if one of them is in the chair, if that is okay with the other two parties. Since we have a full afternoon, I suggest we start right away.

First, we welcome the delegation from the Ontario Nurses' Association. I might mention that I am not the regular chairman of this committee. Mr. Brandt is away on important business today. I am Gordon Dean from Stoney Creek, the riding of Wentworth. I will try to be as impartial and as confusing as Mr. Brandt.

Mr. Ferraro: Impossible.

The Acting Chairman: We have half an hour allotted for your presentation and some questions. We will try to stick to it as rigidly as we can without being really draconian. Would you like to introduce yourselves? The floor is yours.

ONTARIO NURSES' ASSOCIATION

Ms. Lynn: My name is Gloria Lynn. I am president of the Ontario Nurses' Association.

Ms. Slattery: My name is Glenna Slattery. I am chief executive officer.

Ms. Beggs: I am Darcie Beggs, research officer with the union.

Mr. Lawrence: My name is Lawrence Walter. I am also a research officer.

The Acting Chairman: Thank you. We have your submission and we are in your hands for the next half hour.

Ms. Lynn: Mr. Chairman and members of the standing committee on administration of justice, the Ontario Nurses' Association is the union which represents more than 45,000 registered and graduate nurses employed in hospitals, Ontario nursing homes, homes for the aged, public health units, the Victorian Order of Nurses, medical clinics and industry, and 98 per cent are women.

We would like to take this opportunity to thank the Ontario government for allowing this union to make its views known on Bill 154. Also, on behalf

of the women in my union, I would like to congratulate the government for its commitment to the implementation of pay equity in Ontario. Bill 154 is definitely an improvement over the original Bill 105; however, there remain major problem areas which still require amendments. We urge that these amendments be considered seriously and incorporated into Bill 154 before it is passed.

This union believes that the definition of "female job class" in the bill arbitrarily imposes a percentage that is far too high. Citing such a fixed percentage leaves little room for the situations in which the majority of workers in a certain job class are female. If a minimum percentage is implemented, women employed in areas where the majority of workers are male will not be eligible for pay equity coverage.

The bill's definition of "establishment" is another grave concern. It is restrictive and impedes the effectiveness of the legislation. While there is provision for expanding the definition through negotiations between the employer and the union, this does not go far enough. Since health agencies receive funding, directly or indirectly, from the provincial government, our union members work in the quasi-public sector. The bounds of this sector define establishment for our members.

The quasi-public sector would include the same agencies covered by the wage restraint legislation, Bill 179 and Bill 111. In both these pieces of legislation a distinction was made between the private sector and the quasi-public sector. Based on this precedent it is reasonable to propose that the quasi-public sector be deemed to be one establishment under the pay equity legislation.

The union is strongly opposed to the exclusion of any group of women from coverage by the bill. By excluding casual employees a potentially large group of women will be ineligible to receive pay equity adjustment. In nursing, this could lead to varying wage rates for nurses performing virtually identical work. Casual part-time, regular part-time and full-time nurses perform identical job functions. The only major difference is the way these nurses are scheduled to work.

The bill does provide that certain positions will not be deemed casual if they meet the criteria set out in subsection 7(4). If the work period described in this section is the normal 37.5-hour work week, then the majority of this union's casual part-time nurses would have to work at least 12.5 hours per week to be eligible for pay equity adjustments under the bill. However, given the criteria for exclusions, it would be possible for the employer to schedule casual part-time nurses in such a way that they would not work 12.5 hours per week or more.

There are also a great number of casual part-time nurses who would prefer to work additional shifts, but the bill provides incentives for the employer to prevent these casual nurses from obtaining additional shifts. All the employer would have to do is hire additional casual part-time nurses and use them for fewer shifts. This would create a cheap pool of labour for the employer and exclude the casuals from the coverage of any pay equity plan.

In our view, by excluding casual employees, the legislation discriminates against this predominantly female group and defeats the purpose of pay equity. In its present form, the bill also discriminates against workers in the private sector who are employed in companies with fewer than 10 employees.



Similarly, we are concerned about the exemption of new employers just starting out. This exclusion serves as an incentive for employers to delay their opening date, to avoid complying with the legislation. The government has acknowledged that women employed in establishments where there is no comparable male job class will be excluded from coverage by this legislation and has proposed that the Pay Equity Commission of Ontario urgently examine this issue as soon as it is established.

Why wait until the legislation is passed? Justice delayed is justice denied. This issue should be addressed now. A provision to assist these underpaid groups of women should be enshrined in the legislation from the beginning, ensuring that women in all-female work places receive wage adjustments according to the same timetable as other employees. As well, in establishments where there is no male job class of equal value for comparison, the legislation should allow for pay adjustments based on the proportionate value of male and female positions.

The last major area of concern is the role of unions in pay equity negotiations. If there are to be meaningful negotiations between the bargaining agent and the employer about pay equity plans, standard bargaining rights must be clarified in the legislation.

It must be possible, on the request of either party, for pay equity negotiations to be a separate process from regular collective bargaining over wages. This feature is especially important for the broader public sector, because of the lengthy delays in the regular collective bargaining process, as well as the requirement for separate funding arrangements for pay equity outside of moneys for general wage negotiations.

Bargaining agents must also have the right to negotiate whatever methods are most appropriate to achieve pay equity. This means that methods other than job evaluation may be negotiated by the parties as long as pay equity is the outcome. One option that could be considered is the equalization of starting salaries.

The proposed legislation does not specify a right of access by the bargaining agent or complainant to information from the employer. Without complete access to job classifications, wage rates and compensation systems, the legislation will not be open equally to all participants. Obviously, this would seriously hamper their ability to negotiate or to lay a complaint.

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Finally, the union is very concerned about the rumblings from employer representatives that if pay equity is implemented, the cost of such implementation will have to be shared by all employees. This could only mean lower increases in both wage and benefit packages when the parties meet to negotiate a collective agreement. We are strongly opposed to any such action on the part of an employer.

The possibility of employers using a portion of budgeted wage rate increases to finance the achievement of pay equity would not be tolerated. The costs of implementing pay equity should be borne solely by the employer and should not be subsidized by employees. Any attempt by employers to try to use pay equity as an excuse for substandard wage increases should be stopped immediately.

To prohibit general wage increases from being used for pay equity

adjustments, a separate fund must be established from which pay equity payments would be drawn. Also, additional transfer payments must be made to the broader public sector so that the cost of implementing pay equity will be covered solely by the employer. These pay equity transfer payments would be over and above the regular transfer funds already received.

In conclusion, we wish to express our pleasure with the prompt introduction of this bill and urge the government to consider seriously our proposed amendments. We sincerely hope the consultation process for Bill 154 is drastically shortened from that of Bill 105. Nearly a year has passed since Bill 105 was introduced, and the bill is still in committee stage. Women in both the public and private sectors have also waited too long for pay equity principles to be enshrined in legislation. Action must be taken now.

I thank the committee for its attention, and we would be pleased to answer any questions.

The Acting Chairman: Thank you very much for giving us a good, quick runthrough of your brief. That is the way I like to see a presentation made. Then we leave the maximum time for questions.

Ms. Gigantes: Thank you for your brief. I would like to go over the implications you see for members of your association in terms of the coverage of the bill.

When you say you represent 45,000 registered and graduate nurses in Ontario, do most of them work in situations where there would be 100 employees or more, or would most of them fall under the category of fewer than 100 employees?

Ms. Lynn: Probably about a third of our population is in the home sector, a third in the public health sector and a third in the hospital sector.

Ms. Gigantes: Would you tend to find more than 100 employees in the hospital sector?

Ms. Lynn: Our hospital sector has the largest percentage of our nurses, and most of their employers have over 100 employees.

Ms. Gigantes: So most of your association membership would be subject to equal pay plans or able to participate in equal pay plans.

Ms. Lynn: Yes.

Ms. Slattery: We recently had a change in the voting structure. The most equitable way to vote within the union was that they staggered votes for bargaining units of 250 or less, bargaining units of 251 to 500 and bargaining units of 501 and up. It broke down equally into thirds. The percentage in the 250 or less would be what you are looking for, that is, how many bargaining units do we have where there are three employees?

Ms. Gigantes: Yes.

Ms. Slattery: We can get you that information.

Ms. Gigantes: I would be interested to know.

Mr. Charlton: May I ask a supplementary? Of the bargaining units

that are 250 or less, some of those would cover more than one employer. Is that not probably correct?

Ms. Lynn: Yes.

Mr. Charlton: In the context of the legislation, if a local happens to be 250 members, it does not mean that there are 250 members working for an employer; it may be a series of employers, all of which are under 100.

Ms. Lynn: That is right.

Ms. Slattery: We can get you the exact number of locals, the number of bargaining units. Some of our bargaining units have two people. Some of them have 1,200 to 1,500 people.

Ms. Gigantes: At this stage it is not possible for you to say easily, "We know that so many of our members would be ruled out because of the number of employees in a place of employment."

Ms. Slattery: We can say it easily in about an hour. We should have brought those statistics with us, unless one of the researchers can remember them off the top of her head.

Mr. Walter: I might point out the one thing we are concerned about is the exclusion of casuals.

Ms. Gigantes: That was my next area of questioning. Have you been able to reckon how many of your members might be affected in terms of the application of this legislation by the exclusion of casuals?

Ms. Lynn: I have a breakdown from October 1986 based on our 45,000 membership. Out of that total membership 10 per cent or 4,500 are casuals; 34 per cent are regular part-time nurses, or 15,300. The remainder are our full-time employees. That leaves a one per cent breakdown for people who are on maternity leave, leave of absence for education and things like that.

Ms. Gigantes: Beyond the total number that might be excluded under the application of Bill 154 as it stands, it probably would not be the case in your profession that the exclusion of casuals would upset the definition of predominantly female work group.

Ms. Slattery: No. We are 98 per cent women.

Ms. Gigantes: So that would not have a direct effect on the application of the legislation to your membership.

Ms. Slattery: No, but it would have a direct effect on fairness, because the women who work casually or part-time do so either because that is all they can work or because that is all the work that is offered. In any event, when you take the current nursing shortage into consideration--I believe there are 750 empty spots in Toronto alone--we have a significant portion that fall under. The fact that they only work part-time may very well meet their needs or meet the employer's needs, so winnowing out that group from fair treatment does not make sense.

Ms. Gigantes: You have also described how you feel it would provide an incentive for employers to shift their employment patterns.

Ms. Slattery: Definitely.



Ms. Gigantes: In your view, is there also a problem in terms of the application of the legislation, in that there might be an incentive for employees to contract out to smaller companies to provide services?

Ms. Slattery: Most definitely.

Ms. Gigantes: As far as it affects your membership?

Ms. Slattery: Subcontracting is not just the employers in the health care industry; subcontracting is one of the ways in which many employers can abrogate statutes or traditional norms, or what have you. You certainly would have to think, if I were an employer, "What loophole could I find that would exonerate me from having to fulfil the letter of the law?" The first thing that would come to your mind would be subcontracting through the agencies.

Ms. Gigantes: Do you see that as a precise problem in your situation? For example, can you think of a nursing home operator who might subcontract employment?

Ms. Slattery: There is that possibility, and then the Nursing Homes Act calls for minimum standards of care. I believe there only has to be one registered nurse, so it very well might drive the employer to less qualified folk to lessen the burden on the amount of profit return. They would have to pay the less qualified person under the pay equity scheme, but that pay would be less, which would mean that the patient would be getting less care and the employer would still have the same margin of profit.

Ms. Gigantes: I understand. That tendency would exist even if the bill were perfect, given our new nursing home legislation.

One other question, if I may: We have had a number of business organizations appear before us and talk about the need to incorporate into this bill the reality of the labour market and the fact that people get paid what they do by employers, depending on skill shortages and so on. We know that these days the nursing profession offers an example of a female-dominated profession in which there is now, apparently, a grave shortage of enrollees. Have you noticed a marked tendency to increased pay for these people?

1420

Ms. Slattery: Not at all. In recent statistics the average age of the average staff nurse in North America today is 39. By the year 2000 the average age of the average staff nurse in North America will be 55. You do not see young women flocking into this profession. The young troops are somewhat lean. Even when they come through the door, it does not take them long, before they have 20 or 30 years of their lives invested in the industry, to get out. There is obviously a shortage. I was recently told by a newspaper reporter that he had statistics that the nursing schools are flooded with applicants. I said, sure, recruit is one thing; retain is another.

The bottom line here is that this is the last large enclave of women. It is a group of women that has borne and subsidized the industry for years. Prior to collective bargaining in health care there was no employer that enjoyed such unilateral decision-making powers over the work force. They have still continued to enjoy that to a degree in that women are not comfortable with stepping forward and being counted as a group. There will be a million different ways for pay equity to be abridged and abrogated. The bottom line is, if women were going to be paid according to market demand you would have

to double the nurses' salaries, not only to get them but, more important, to keep them.

Ms. Lynn: Contrary to what some people may think, nursing is a highly skilled industry. It is not unskilled labour that is manning the hospitals, the nursing homes, the Victorian Order of Nurses and public health.

Ms. Gigantes: But we have been told by business groups that the reason women are being underpaid is that there is an oversupply of women in certain categories.

Ms. Slattery: Oh, fiddle-de-dee, if they cannot come up with something better than that. That is a pretty bare-bones reason that 50 per cent of the population should be impugned and treated less well than the other 50 per cent. It is a very small mentality and, I might add, probably locked into about 1909.

Mr. Ferraro: Thank you for the presentation. I would first like to ask a point of clarification: Do you have a breakdown of representation as far as establishment or business size is concerned? I suspect most nurses are employed by large hospitals. I am trying to get a distinction between that sort of entity and a small business with, say, fewer than 10 or 20 people.

Ms. Beggs: We have our statistics by union member, so we know how many of our members are in any particular bargaining unit. We are not sure how many total employees would be in any particular--

Mr. Ferraro: They would be large, obviously.

Ms. Beggs: Not all of them, no.

Mr. Ferraro: What would be the average size?

Ms. Beggs: I do not know.

Mr. Walter: The smaller sizes would be in the nursing home segment: in some of the nursing homes and in the homes for the aged. The hospitals are larger populations--their bargaining units as well as total population.

Mr. Ferraro: Do you have a proportion of which would be in the larger institutions as opposed to the smaller ones?

Mr. Walter: We have that, but not right in front of us.

Mr. Ferraro: I have some difficulty with the one point you make--and I might get a "fiddle-de-dee" when I say this--that there should be no exclusions whatsoever. I frankly think, and as some have indicated, this is somewhat unique legislation going into the private sector, and I truthfully believe that small businesses, particularly those with fewer than 10 employees, should be exempted. You categorically say they should not be. I suspect from a moral point of view it is possible to argue that. Surely from an economic and logical point of view, at least to some degree from my perspective, there should be an exemption because of the inherent nature. I can give you all the reasons that there should be.

Ms. Lynn: If I am a nurse employed at a hospital I should get paid X number of dollars. I come with the same skill package and decide to work in a nursing home because I enjoy doing geriatric care, and that employer happens



to have fewer than 10 employees. Should I then get paid less money? Is that what I am hearing you say?

Mr. Ferraro: I am saying that I think a small entrepreneur cannot adapt as readily as a large one and, as such, should be treated specially.

Ms. Slattery: How about you go to work for him and make 20 or 30 per cent less because he is little? That is an unfair thing to expect. You have an industry here that is already costing Ontario \$10 billion a year and \$27 million a day. It is a service-intensive and labour-intensive industry which is 80 per cent women. The largest single group within it is the registered nurses which are 98 per cent women.

You are saying that 10, 20, 15 or whatever percentage of those women who work in an agency of less than 10 employees should work for less. I am saying what will happen is the women are going to say, "Is he crazy? Why should I work for less?" Then, she will go to hospital B and get herself a job.

Mr. Ferraro: Surely she can say that now, can she not? In fairness, I am just playing devil's advocate.

Ms. Gigantes: On page 64 of the bill as printed, if I am reading this right, under the Ministry of Health designations of the public service, a nursing home would be covered as a public service work place and would therefore be automatically covered no matter how many employees. Am I reading that correctly?

Mr. Ward: I will clarify that, but I think you are.

Ms. Gigantes: Could we confirm that, please, because it makes this discussion moot?

Ms. Slattery: Moot from the standpoint that it is not moot.

Mr. Ferraro: While we are looking at it, would it then preclude any membership in your association from being categorized as small business?

Ms. Slattery: How do you expect a trade union to sit in front of a committee and say that we agree to have less than equitable treatment for any member of our union, based on the fact that the employer may have a pinch or two in his shoe? Justice is justice. Is it okay to be unjust to three people, but not okay to be unjust to 300? If you are doing work that is work that needs to be done by society, I do not care whether it is one person or 1,000.

For sure, a union is not going to say, "Well, maybe it is okay if you impugn our members as long as you do not do it to more than 10 at a time."

Ms. Fish: My supplementary was going to be on the same point that Ms. Gigantes raised about whether the nursing homes were included. While we are waiting for that to be confirmed, maybe I could just add that I am assuming that the principal area of private sector work is in the nursing homes. Would that be correct for your membership? Is that right? If the nursing homes are involved, then we do get out from under the particulars of your case on the exemption of 10 and under.

Ms. Beggs: We do have a few private sector--

Ms. Fish: Other than the nursing homes?



Ms. Beggs: Yes.

Ms. Fish: What would they be? Could you just share that with me?

Ms. Beggs: We have (inaudible) nurses, VONs, registereds; we have a weight-loss clinics.

Interjection: Public health nurses?

Ms. Beggs: Red Cross. We have a fairly large private sector.

Ms. Fish: In the private voluntary sector, and your concern is as to whether they would then be exempt by virtue of size of establishment. Okay. Thank you.

Mr. Charlton: I would like to follow up with the parliamentary assistant to the question my colleague raised about whether or not nursing homes are automatically covered under that list of what is defined as the broader public sector.

Mr. Ward: Any licensed nursing home would be covered.

Mr. Charlton: Okay. The follow-up question is whether or not that would preclude the question of contracting out, i.e. a nursing home contracting out for nursing services as opposed to hiring employees directly, and what impact would that have in terms of the coverage of their members.

Mr. Ward: No, it would not preclude that.

The Acting Chairman (Mr. Dean): Any other questions? Thank you very much for making a good presentation and for giving, shall I say, sharp answers.

Ms. Slattery: Can I say one more thing? The question by the gentleman over there related to the 10 employees. Ontario first passed this equal pay for equal work legislation in 1951 and, quite frankly, I think 35 years is long enough to ruminate. Now it is time to swallow and we have got to go on. But, you might want to contact people in Australia where pay equity has been the law since 1972. I am sure they solved these problems there.

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Mr. Ferraro: Let me say something, if I may, and let this lady have a chance to respond.

The Acting Chairman: Very briefly.

Mr. Ferraro: As I understood it, the presentation did not particularly pertain to nurses, so in the context of your criticism of the legislation exempting all small business, I was asking you a very general question.

Ms. Slattery: Right.

Mr. Ferraro: From the union standpoint, I appreciate that; however, I do not agree with it.

Ms. Slattery: I would assume that small business in Australia has solved it. We do not need to reinvent the wheel. Somebody has done it in Australia.

Mr. Ferraro: Ontario is in Canada.

The Acting Chairman: We are after the government to give us some of the information it has on the impact elsewhere, and we hope we get that.

Mr. Ward: In Australia?

The Acting Chairman: You are not getting a trip to Australia. They are going to send the committee. Thank you very much, ladies and gentlemen.

The next presentation is by the Federation of Women Teachers' Associations of Ontario.

While the members of the delegation are getting themselves seated, I would like to suggest to any members of the committee who may be unable to stand it until four o'clock without a drag on the weed that they do it individually. I do not think we have time for a break this afternoon. We will miss you as you leave.

Thank you for coming today, members of the Federation of Women Teachers' Associations of Canada. Would you please introduce yourselves and then continue with your presentation? We have allocated an hour for you, but that does not mean that you have to fill it all up. I speak to my colleagues equally with that advice.

#### FEDERATION OF WOMEN TEACHERS' ASSOCIATIONS OF ONTARIO

Ms. Dewey: I am Carol Dewey and I am president of the Federation of Women Teachers' Associations of Ontario, representing the 32,000 women who teach in Ontario's elementary public schools. We are a member organization of the Equal Pay Coalition and have been, with the coalition and independently, urging pay equity legislation for many years. We are relieved that in this appearance before a legislative committee we are no longer talking theoretically, but are here to talk about actual legislation.

There is much in Bill 154 that we support, and we will be listing the features we hope will remain in the bill. We have some recommendations that we believe will strengthen the bill so that the legislation will achieve its aim of redressing gender discrimination in the compensation of employees employed in female classes in the broader public sector and in the private sector in Ontario.

To my right, Kay Sigurjonsson, the deputy executive director of FWTAO, represents the federation on the Equal Pay Coalition. Further to my right, Marilyn Roycroft is an executive assistant in our organization. They will outline our reaction to Bill 154, and we would be pleased to answer questions.

Ms. Roycroft: As Carol has said, there is much in Bill 154 that we support. We would also like to acknowledge the tremendous amount of consultation and work that has gone into this piece of legislation. We feel very strongly that the good features of Bill 154, the features which bring it closest to real equal pay for work of equal value legislation, must be preserved.

As some of you are aware, the Federation of Women Teachers' Associations of Ontario has been before legislative committees in the past urging equal pay for work of equal value legislation. The things we feel strongly should be in this bill are not new. Let me outline them very briefly.

First, we appreciate the fact that the bill covers the entire public sector and much of the private sector. We welcome this coverage of the private sector. We have argued for it in the past, and we will argue for even broader coverage in our amendments. Kay will be elaborating on that.

Second, the bill appears to require both a proactive--that is, employer-initiated--and a complaint-based approach. We believe some fine tuning would help, but the basic structure for both approaches appears to be present in the bill now, and we are grateful for that.

Third, we think that Bill 154 is a big step from what we now have in legislation in terms of recognizing that women will continue to be paid unfairly if they can only compare their work to similar work being done by men. You will hear that it is impossible to measure value. All we can say is that it has been done before, it is presently being done in other jurisdictions and we believe that employers and the government in Ontario can rise to do the same. The comparison required under Bill 154, skill, effort, responsibility and working conditions, reflects that equal value measurement that we have been advocating for years.

Fourth, there is a recognition of the right of unions to negotiate how pay equity would be achieved. We do not think that Bill 154 goes far enough in establishing that role and we will be pushing for more extensive rights, but we are glad to see that it is there.

Fifth, the bill establishes a powerful pay equity commission which is clearly necessary. It gives the employees the right to object to the pay equity plan devised by the employers and to lodge complaints, anonymously if desired. These are very necessary features and the bill would be weaker without them.

Finally, let me say that we are glad there is a strong definition of part-time workers. We think that will allow most members of this very much exploited group to be covered by the legislation. We will probably look for some additional categories to be included, but we support the government's inclusion of part-time in the definition.

Kay Sigurjonsson, our deputy executive director will now elaborate on our proposed amendments.

Ms. Sigurjonsson: We have suggested amendments in several categories and I will review them fairly quickly in the order in which they appear in the brief.

First, we talk about our hope that in the fullness of time the province will achieve a real equal pay for work of equal value standard. As you know and as the government knows, this bill is a pay equity bill and there is a difference between pay equity and real equal pay for work of equal value to which the country and this province are committed, because we have endorsed the International Labour Organization Convention 100, which says we are in support of equal value.

In order for the bill to move in that direction, the following are the amendments that would be needed. I will talk about them in categories, because you will have heard from other groups and will be hearing from additional groups about this need for amendment.

First, in a real equal value régime, there would be universal coverage.



A matter which has been raised before you again and again is the exemption of employers with fewer than 10 employees and the gender predominance requirement, that is, that is for those women who work in 60 per cent female work places by themselves, or for men who work in 70 per cent male work places.

I am interested to notice that one of the small business organizations has suggested that there is a charter case in equality to be made against these exemptions. If the Canadian Federation of Independent Business and the women's movement can agree, perhaps we could eliminate the exemption of the under 10, we could eliminate the gender predominance requirement and we will all live happily ever after with pay equity legislation. Universal coverage, then, is first.

The difficulty, of course, with exempting the people in small work places, as you know, is that about 12 per cent of women in the province work in work places with fewer than 10 employees. They are in many cases among the lowest paid of all women in the economy, including immigrant women, visible minority women and others who have pleaded with you, have pleaded before the green paper consultative panel for coverage in their very badly paid work places.

Second, to have a real equal pay for work of equal value standard, we would have to have at least a complete procedure available to everybody, to every worker, so that in the fullness of time--and I should say, by the way, that we are not recommending that the gender predominance figures be eliminated right away.

We think there is, if nothing else, a convenience about having gender predominance in the proactive period when players have to initiate pay equity, but in the complete stage, we can get close to real equal value if we eliminate the gender predominance and, in fact, even earlier than that, if we can have some flexibility. It is not going to work in all work places to use those 60 per cent and 70 per cent figures, so we would ask for some flexibility, though we recognize the usefulness of some kind of gender predominance figures in the early stages. But for real equal value, we have to get rid of those exemptions.

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Our second set of amendments--and I think every group of workers and every women's group that has appeared before you so far has mentioned this very near the top of the list--has to do with the need for a shorter implementation period; if nothing else, at least the need for a fixed period.

Even if you were to say "within 10 years," we think that is far too long--and we think the payout should be within five years--but if we do not have some limit on the payout, the wage adjustment due to women and men, in those very areas where women are most exploited and most underpaid, it will take the longest for them to catch up.

I believe you have had an example from one group, the Young Women's Christian Association, of a work place in which it would take 22 years for the women to close the gap. My guess is that it would take longer, because wage adjustments tend to be on a percentage basis. The higher wages escalate more quickly, and unless we say it must be done in a limited period of time, people will die of old age and still not be covered by this bill.

The implementation recommendations we have made are not particularly

original. They are a place to start. I think they are quite similar, although they are not identical, to the proposals made by the Ontario Federation of Labour; that is, for the public sector, just as it is in the bill, post the plan within one year and start payout within two years.

The gap is narrower in the public sector, even in the broader public sector, than it is in the private sector, so to suggest that payouts must be ended within five years, that is, pay equity reached within five years, is not unreasonable in the public sector.

It may be harder in the private sector, so we are suggesting you give employers in the large private sector a couple of years to develop plans and post them; give them to the third year to start wage adjustments retroactive to the second, so there is no advantage in dragging their feet--we obviously have to look at that human instinct--and give them five years after the first payout to finish closing the gap.

I do not know whether Marilyn mentioned it at beginning, but a very good feature of the bill and one with which we certainly concur is that the lowest paid should receive larger adjustments to begin with. Obviously, that is fair.

The third area where we would seek amendment is one on which I do not think I need to spend any time at all, because there is all-party agreement on this, that is, some of the most desperately underpaid women in society are those who work in all-female work places. We use the example of child care workers. There are others, such as social service workers.

We point out in our brief that it is an irony of our society that people doing what we all suggest are the most important jobs in the world nevertheless tend to starve from doing those jobs, looking after children, working in nursing homes and so on. We suggest that all-female work places be covered. We know how difficult it is to do in this piece of legislation, because this legislation is a regime set up to compare male and female wages, and if there are not any male wages to compare to, this bill cannot easily cover them. We suggest the pay equity commission simply be given power to look after all-female work places, without spelling out in our own recommendation how that should be done. We would be prepared to talk about that, if you wish.

The fourth area of our concern, as with many other groups, is the area of exclusions. First of all, on the question of seniority, like most workers and most employers, we are perfectly reconciled and, in fact, perfectly in favour of recognition of seniority, years of experience, for purposes of pay. If you are a highly experienced worker, you probably deserve to be paid more than a less experienced worker. However, as an all-female organization, we are only too aware of how even seniority can be manipulated so it works against women.

There are a great many employers in the province who recognize only continuous experience with an employer. That sounds fair enough, but what that means is that if a woman has broken experience because she stayed home for child-bearing or child-rearing, she may not get credit for her previous experience, even with that same employer. That is true of public sector as well as private sector employers. It is gender biased, and if it is that kind of seniority system, we would not be able to buy even that. But if it is, as the bill suggests, nonbiased, gender-neutral seniority, then we would, of course, accept that as an exclusion.

The question of merit is one we have a lot of experience with. There is



not a teacher group in the world that I know of in favour of merit pay. One reason has nothing to do with gender; it has to do with the difficulty of any kind of unbiased merit rating. Our concern is with the enormous amount of research--and we can provide you with about 100 pounds of it, if you like--indicating the deep gender bias that exists in almost all merit rating. Whether men or women do the rating, women's work tends to be undervalued. So to allow merit, even to say in the bill that it is to be gender neutral--show me the merit rating scheme which is gender neutral. We have never encountered one. We have difficulty with merit as an exclusion.

The question of skills shortage is a very complicated one, and we understand why it is in there as an exemption. If I may say so, it is in there as a gesture of belief in the market system, as though the market were, in the economists' term, a perfect market. Skills shortages are the product of gender bias. Skills shortages are the product of the fact that the market is a traditional instrument, and the market represents traditional values. The market represents male values.

Historically, women have been drafted into what has been called women's work. It was done deliberately, as you all know, during the Industrial Revolution so that the low wages of women would not mean they got jobs and men did not. There was women's work and men's work, and almost all of us in this room are old enough to remember when the newspapers advertised "Men Wanted" or "Women Wanted."

Obviously, you defined work by gender and then suddenly, in the 1960s, in this country one million women went out to work and they went into fields which were suddenly enormously overcrowded. Since then, we have talked about skills training so that we can have women doing the jobs in which there is a shortage. You all know those programs are a complete and absolute farce, that is, women are being trained for the same old jobs, the jobs that are disappearing.

As a result, we are very nervous of talking about a skills shortage. Women can be trained to fill the jobs where there is a shortage. Maybe I missed it because I was out of the room, but I am surprised that the nurses did not talk to you about how little good it does to have a skill shortage in fields where women dominate.

Ms. Gigantes: They did.

Ms. Sigurjonsson: Did they mention that? We are turning the city inside out trying to lure people here at substandard wages rather than saying: "Right, there is a shortage of nurses. Let us zap up the wages." Skill shortages do not help women. I think we should be very leery about including them as exemptions which would continue to hurt women.

There are couple of other exemptions I might mention. You have just heard a presentation from the nurses which was exactly what we wanted to say about casual, on-call people in teaching. We want them included, not excluded.

The question of bargaining strength is an interesting one. I do not think we have to say anything about bargaining strength, inasmuch as I sat here Monday morning and heard the Ontario Federation of Labour, which represents 500,000 men in powerful men's unions, say, "We do not want exemption on the basis of bargaining strength."

You would expect to hear that from us because women tend either not to



be unionized or to be in weak unions, but you have heard it from men in the AFL. If labour does not want that exemption, I cannot imagine why the government would force it on them, so we would like to leave that one out too.

Finally, in my part of this presentation, I want to mention the pay equity commission. We do not intend to go into the powers of that commission because the Equal Pay Coalition will be doing that. We want to make a plea here--because we do not have another forum in which to do it--for the commission to be adequately financed and provided with staff and resources.

In the early years of this bill, if it turns out that it takes years for the commission to hold hearings and years for a review officer to show up, there is going to be a very great deal of cynicism, disillusionment and bitterness about the bill. We plead for enough resources, particularly in the early years.

Carol is going to speak about some of the opposition to this bill, and what our response is to that opposition.

1450

Ms. Dewey: A suggestion has come from one of the school trustees' organizations, asking that teachers be exempt from the application of Bill 154. The trustees argue that school boards and teachers, through collective bargaining, have established a compensation system free of gender bias. If that is the case, the trustees have nothing to fear from costs under Bill 154, and there is no need for teachers to be exempt.

More important, if any group of employees were to be exempt from the legislation on the basis of employer testimony that there is no gender bias in their compensation, the ranks of those covered might be seriously depleted. Teacher salary grids should be examined, like all other pay arrangements, under Bill 154. No group should be exempt from pay equity legislation. Kay is going to summarize briefly.

Mr. Ferraro: Was that the Ontario Public School Trustees' Association or the Ontario Public School Teachers' Federation that presented last week?

Ms. Dewey: It was the trustees' association that was seeking the exemption of teachers.

Ms. Sigurjonsson: We would be happy to talk about the teacher grids. I think the trustees were really operating under a misapprehension about what this bill means. I think we have clarified it, but they will be appearing before you next week. We would be glad to talk about the grids, if you like.

We wanted to respond to the kind of opposition to this bill that we have all been running into in the media and that you have been hearing at these hearings. We have described it in our brief as the hysterical opposition of some employer groups. What we want to make very clear is that we are not in any way critical of the employers who have real fears about the bill. We are not criticizing small employers who say, "We do not have sophisticated personnel practices and we do not know how to do it." They have every right, obviously, to be worried about the bill.

Our answer is that there must be a pay equity commission with enough staff to provide the education and assistance those uneasy employers need. The

kind of hysteria, which I think even some employers must be finding very embarrassing, is the sort of stuff which is appearing in advertisements and newspapers talking about the pay police. We have suggested in the brief that the very expression ought to be dealt with with the hilarity it deserves.

This is the kind of opposition which every attempt by women to achieve any kind of equality has always met. The hysterical and excessive attacks on this bill sound very much like the attacks on women's right to vote. In fact, for my own amusement I have been re-reading Nellie McClung this week, talking about women voting too often. That was the fear a lot of men had. The ridiculousness and absurdity of the extreme opposition is really embarrassing.

The same hysteria greeted the attempt by this government and other governments in Canada to introduce equal pay for equal work in the 1950s. I remember reading some of that coverage. We were told that the country would go to rack and ruin, we would lose our competitive position, businesses would close, people, in particular women, would lose their jobs. People now say proudly as though it were a mark of their civilization, "Of course, we are in favour of equal pay for equal work." The same people who are now proudly saying they are in favour of it were not 30 years ago.

We will look back on this debate 30 years from now with the same toe-curling embarrassment that we could have imagined women should not be paid for the value of the work they do. In spite of the ludicrousness of some of the opposition, I think it has to be answered. The Toronto Star suggests that women should just pull up their socks and train themselves for better jobs, that is, men's jobs.

The problem with that is that even university-educated women in this country are paid about the same as men with high school education, and little more than men with grade 8 education. The fact is that the employers who now say we should have affirmative action plans are the very employers who have fought tooth and nail against affirmative action when we have tried to introduce it.

The second suggestion made to us is that if women would just move into well-paid jobs, whether or not they were nontraditional, all this would be looked after. Let me point out something which is not new to many of you: 43 per cent of all working women in Canada would have to trade jobs to have the same job distribution as men. The women might be happy to trade jobs. As Julie Griffin of the OFL said to you the other day, "What man in his right mind would take the jobs that would be vacated?"

That is the first argument then, that someone has to do the jobs those women are doing. They should not have to trade jobs to be adequately paid. Even from the economic point of view, it would not make any sense to ask men to take those jobs, because within five minutes, those jobs would be found to be of much greater value than they had previously been seen to be and the men would have to be paid at a higher rate anyway. From the economic point of view, it does not make any sense. The point is to pay women for the value of the work they do now.

The next argument raised is that of cost, and I have been absolutely bemused by the lack of logic in that argument. We are told in one full-page ad that this is a nonexistent problem. If it did not exist, there would be no cost required to remedy it. If there is going to be an enormous cost, it will be the cost now being borne by underpaid women and it will be in direct proportion to the degree of discrimination that now exists.



The opposition we face comes from the same philosophy of life which opposed a minimum wage, the end of child labour and health and safety legislation. We now know we took civilized steps when we passed those pieces of legislation. We must listen to the reasonable fears, but we have to dismiss and ignore the unreasonable fears. When you pass this legislation, you will know that the majority of citizens in Ontario are behind justice and equity.

We will be glad to answer questions.

The Acting Chairman: Thank you very much. We have two or three people who have indicated a desire to ask questions. The first is Ms. Fish.

Ms. Fish: I thank the delegation for coming in to address us. You moved quite quickly past the merit rating as clearly not being gender neutral. I wonder if you can take a minute or two to elaborate on that point for us.

Ms. Sigurjonsson: The studies that have been done on merit rating--not in the school system, but in all kinds of other places--have suggested, first, that most managers are men, but even where managers are women, all of us have such stereotyped views of what performance is that we tend to measure against essentially male standards of performance.

Second, we have all of us, whether women or men, been socialized to believe, particularly in certain kinds of work--management work, for example--in the superiority of a masculine or a male approach. This is true even in writing exams.

This is the very famous study that has been done. Many of you will know about it. When people mark papers which are blind, that is, they do not know whether a paper has been written by a man or woman, and are told a paper has been written by a man, the people who mark it give it, by and large, up to 20 per cent higher marks. I am not happy with that kind of socialization. I think gender bias is so deep in this society, in all of us, that this kind of merit rating tends almost inevitably to reflect that bias.

Ms. Fish: You used the term "male standards of performance." Can you elaborate on that for us? This is an area that will be of some concern to those who are listening to your presentation, precisely because of the very point you raised, that, on the face of it, a merit pay increase sounds goods and sounds gender neutral. Can you be a little more specific in what you mean by a male performance standard?

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Ms. Sirgurjonsson: Yes. I can give you some examples from teaching. When men and women are interviewed for principals' jobs, for instance, or vice-principals or the heads of departments, that kind of thing, occasionally we have had cause to go to see the school board afterwards and say: "How is it that this much-less qualified man was promoted? He does not have principals' qualifications, but this woman does and has two graduate degrees, and so on. There may be good reasons, but we would like to know those reasons."

We are often told he had a much better interview, so it is absolutely subjective. We start asking, "Well, what was better about it?" When people start to analyse they say, "She did not sound as forceful." We say, "Do you mean her voice was higher?" They answer: "Well, yes, that might be. She did not look the part." You look at the other 40 principals in the school system and they are all men; so of course, she did not look the part.



When people start to analyse, this is a subject I could be here right past the hour you have allotted for the National Citizens' Coalition, if you would like me to go into great detail, but it is that kind of thing. As I say, I am not laying blame on anybody. It is when you start to analyse, "They do not look right," by asking what that means that you find they were not wearing suits and ties or they do not sound right or they are not forceful or there is a different style.

Leadership styles of men and women are quite often different, not always, obviously. But if you have in your mind that leadership means a certain set of qualities--I use that example because that is what we are most familiar with in the school system--then obviously you are going to say, "This person was much better than that person." When you have a two-hour workshop on the subject, you think: "My God, that is right. We did it on a gender-biased basis."

The Acting Chairman (Mr. Dean): All of us who are married happily can testify to the different method of leadership that women exercise. That is a positive statement.

Ms. Fish: Can you, Ms. Sigurjonsson, just take a brief moment to review the grid system as part of the reply to the trustees who suggested that they should be exempt from any application of pay equity?

Ms. Sigurjonsson: Basically, the grid system that teachers in the elementary system are paid on is a reflection of both years of experience and qualifications. Recognizing that we still have within our teaching body many people who started teaching before a degree was required, we still have categories for people who do not have a degree yet, called our nondegree categories.

Then we have categories for people who have their degrees and then have additional qualifications. In some cases, those additional qualifications are master's degrees. In some cases, they are what used to be called Ministry of Education courses but they are now called additional qualifications courses, and are offered by faculties of education. In some subject areas it is a matter of taking three or four courses to get a specialist, and that qualifies you for changing category.

Four of the teaching groups in the province, ourselves, the Ontario Public School Teachers' Federation, l'Association des enseignants franco-ontariens and the Ontario English Catholic Teacher's Association, are members of the Qualifications Evaluation Council of Ontario. The Qualifications Evaluation Council of Ontario is simply the body that sets down the rules. You must recognize that we make up the body and so we make the rules for changing from one category to another.

Basically, that is how it operates. Within each category, the number of years of experience to get to maximum varies from board to board because the teachers negotiate with their board the salaries within the categories. They also negotiate with the board which program of QECO the board is willing to recognize as its qualification standard.

Ms. Fish: So the difficulty comes in with what the board will or will not take from the recommendations in terms of the qualifying standards. Is that where the problem approaches? I thought I heard you make remarks that were critical of the grid system and the way it was taken up by some of the boards.

Ms. Sigurjonsson: No, not necessarily. I think the problem with the trustees' stand--some of you will have read that the public school trustees' association want the teachers exempt from the legislation. First of all, I think the government would be quite uncomfortable exempting a large group of public sector employees and covering the private sector and so on; so, obviously, we do not want to be exempt. But I think what the trustees were worried about is that the grids reflect qualifications, and we want that and the trustees want that. We want teachers to be paid, in part, on the basis of their qualifications.

What the trustees were unaware of is that the bill will allow that. The word "skill" in the bill undoubtedly covers qualifications. At least, it does in every job evaluation scheme I have ever known, and it is does in the other jurisdictions where there is equal pay for work of equal value. So I think the trustees, once they recognize that, may be quite satisfied.

Ms. Fish: I am sorry. You felt the trustees perhaps did not understand the bill properly, rather than it being a problem with either the takeup or the content of the grid system.

Ms. Sigurjonsson: I think that is quite true.

Ms. Fish: My apologies.

Ms. Sigurjonsson: Once they recognize that, I think they may--

Ms. Fish: Thank you very much.

Mr. Baetz: A somewhat related question: I realize your association's and your own interest in this, of course, goes far beyond your own membership, but the question really is to what extent is there, in your view, a gender bias remaining in your system. Is there or is there not?

Ms. Sigurjonsson: There is very great gender bias in the school system, but it may not be corrected by this bill. In other words, it tends not to be so much in pay as it is in promotion. We have 3,000 elementary schools, in which two thirds of the teachers and fewer than 200 of the principals are women. That is astounding, and that is after many years of a hard-fought campaign on the part of this organization. The ministry, as you know, does have an employment equity stand, and we are hoping that things will improve; but that is the way it is now.

As far as pay equity is concerned, obviously, we do not want to be exempt; we want to be covered. We think it is worth looking at those school boards in which there is a considerable gap between the pay of the elementary teachers, mainly women, and the secondary teachers, mainly men, who have exactly the same qualifications.

I think that is where there may be some application of this bill. The gender predominance requirements may not allow it, because the secondary schools tend not to be quite 70 per cent men. They tend to be more like 65 or something like that, but there may be some coverage for us there. But we await the next bill, which is employment equity, to solve the other problem for us.

Mr. Baetz: As far as your own membership is concerned, this one really is not going to address the big problem.

Ms. Sigurjonsson: We will look at it. It will help in some school

boards where we do not have parity with the secondary schools.

Mr. Baetz: Thank you.

The Acting Chairman: Mr. Polsinelli? Oh, he has gone.

Mr. Ferraro: His question was answered. It was about the teachers and the trustees.

The Acting Chairman: It was? Okay.

Ms. Gigantes: My question has not been asked. One thing I would perhaps suggest is that it is obviously much easier to teach eight-year-olds than it is to teach 16-year-olds. Anybody who has dealt with either of those age groups would know that.

Ms. Sigurjonsson: I think, just in that connection, one of the things we are going to be looking at is that this bill requires comparison not only of skills and responsibilities but also of effort and working conditions. The fact is that most primary teachers have no preparation time whatsoever, which means they are in contact with, as you say, eight-year-olds and five-year-olds--

Ms. Gigantes: And snowsuits.

Ms. Sigurjonsson: --without a break, whereas most secondary teachers expect at least 25 per cent of their time to be preparation time. We tend also in the elementary schools to have much larger classes. The pupil-teacher ratio is higher in the elementary schools.

I have never taught young children myself, but my own guess is that if I had to have 40 of either age group, I would rather have 16-year-olds who can at least read on their own than young children, so we are certainly going to be looking at working conditions when we look at this bill.

Ms. Gigantes: Thank you.

The Acting Chairman: Ms. Caplan.

Ms. Caplan: My question has been answered, thank you.

The Acting Chairman: Ladies, you seem to have answered everybody's questions, so while we are intimidated, is there something we are not asking? I do not think you will find politicians easily intimidated, so I think it is the former.

We appreciate your very straightforward submission and your clear answers to questions.

Ms. Fish: May we have a brief break?

The Acting Chairman: Yes. As soon as we come back from the break, Mr. Ward has a statement he wishes to make, accompanied with gold, frankincense and myrrh I hope.

The committee recessed at 3:11 p.m.



The Acting Chairman: Come to order, please. The members of the committee are awaiting with considerable interest the indication of the parliamentary assistant to the minister that he wishes to tell us something we do not know.

Mr. Ward: I wish to respond to the request of the standing committee on administration of justice of Monday, February 23, concerning the release of studies which the government has undertaken in relation to Bill 154.

The consultation panel has already made public its finding in connection with the public consultations that took place between February and May 1986. In fact, the panel's report was tabled on September 3 of last year. This panel was never mandated to deliver recommendations on the form which the legislation should take. Further, no recommendations were presented either to the Premier (Mr. Peterson) or to the minister responsible for women's issues.

Concerning the issue of the constitutionality of Bill 154, the Canadian Federation of Independent Business has written to the Attorney General (Mr. Scott), who is also the minister responsible for women's issues, and the minister will be responding to their correspondence.

The government has commissioned a number of consultants' reports and surveys pertaining to pay equity. These documents will be tabled today to the committee. They are as follows:

1. Survey of Private Sector Firms in Selected Industrial Sectors in Ontario.
2. Achieving Pay Equity in Small Businesses in Ontario.
3. Report to the Assistant Deputy Minister, Ontario Women's Directorate, on Consultations Concerning Effective Implementation of Equal Pay for Work of Equal Value in Small Businesses, held between August 11 and October 10, 1986.
4. The Question of "Comparable Worth" and the "Standard Setters."

All those reports were prepared for the Ontario women's directorate.

Prepared for the Ministry of Industry, Trade and Technology are (1) Report on the Status of Female Employees in Small Business to the Small Business Advocacy Unit and (2) Pay Equity and Ontario's Small Business Sector.

Regarding references to three MITT studies, Pay Equity and Ontario's Small Business Sector is one report which addressed two distinct issues. A set of these reports will be given to the clerk of this committee today and a set will be provided to the press gallery. Additional sets will be given to the legislative library in the Ontario women's directorate resource centre.

The Acting Chairman: Any comments from committee members?

Ms. Fish: What about to members of the committee?

Mr. Ward: We are tabling them with the committee.

Ms. Fish: One set to the clerk?

The Acting Chairman: I presume the clerk will make sure that--

Clerk of the Committee: One set per caucus.

Mr. Ward: We will do what we can.

Ms. Gigantes: May I ask the parliamentary assistant whether that list--it is not clear from reading the list--includes the implementation studies that were undertaken with funding from the directorate by the labour advisory committee and the business advisory committee set up by the Attorney General.

Mr. Ward: No, it does not include those.

Ms. Gigantes: What is the status of those reports?

Mr. Ward: Again, the funding was provided for those studies. Those are the studies that contain the proprietary information. They are not in the possession of the directorate nor are they the property of anybody other than those advisory groups and the consultants involved.

Ms. Gigantes: Have there been executive summaries of those studies prepared and presented to an agency of the government?

Mr. Ward: Not that I am aware of.

Ms. Gigantes: Will you check that, please?

Mr. Ward: Yes, we will.

The Acting Chairman: Is there any other comment or question? Thank you very much, Mr. Ward, for doing what you said you would do and doing it promptly. We look forward to seeing what is in the studies.

Mr. Ward: That should tie up your weekend.

The Acting Chairman: Sometimes that would be a good thing to do on a weekend.

We now come to the final presenters of the day, the National Citizens' Coalition. I believe David Somerville is the president. This is him coming now. Welcome. Thank you very much for coming. We hope you do not mind starting a few minutes early. It will give everybody at least five minutes more to enjoy what you are going to tell us. The floor is yours until at least four o'clock, depending on what happens then.

#### NATIONAL CITIZENS' COALITION

Mr. Somerville: I would like to thank you and the committee members for giving us the opportunity to present this brief before you today. I will go through the brief and then, I hope, I will be able to answer any questions you have on it.

The National Citizens' Coalition opposes Bill 154 because, in general, it will result in more government and less freedom for Ontarians. We object to Bill 154 for the following three broad reasons: (1) because of the draconian powers given to pay police, called pay review officers, to violate civil and property rights and the arbitrariness of the bill; (2) because the government of Ontario has not yet established that the market is not valuing various jobs appropriately in Ontario; and (3) because of the adverse effects of Bill 154 if it is passed.

First, I would like to address some examples of arbitrariness and

violations of normal judicial procedure and rights. I will refer to individual sections.

1. Subsection 32(4) of Bill 154 allows for a complainant against a business to remain anonymous. Does not the accused, in the Ontario of 1987, have the right to know the name of his accuser?
  2. Subsection 33(2) gives the pay police a wide range of powers which include entering business premises without a warrant and searching, seizing and removing private records.
  3. Subsection 15(2) allows pay police to impose wages upon businesses.
  4. The pay police will determine those wages using arbitrary guidelines to value jobs. Clauses 35(d) and (e) allow a handful of cabinet ministers, through an order of the Lieutenant Governor in Council, to prescribe these guidelines.
  5. Subsection 29(1) provides that there will be no appeal of decisions by the pay police beyond the Pay Equity Commission of Ontario.
  6. Subsection 1(1) allows pay police complete power to decide arbitrarily what features constitute male job classes and female job classes.
  7. Section 12 assumes that employers with at least 100 employees are guilty of not using a fair method of determining compensation for their employees by requiring them to prove they are doing so by drawing up pay equity plans. In other words, these employers are assumed to be guilty until they prove themselves innocent.
  8. Clause 7(1)(e) may require employers to prove that wage levels between different job classes are a result of a skills shortage, without so much as hinting how the employer is to prove it.
  9. Clause 8(2)(b) allows employees with access to confidential private records to divulge them, contrary to the conditions of employment, and prohibits the employer from taking disciplinary action against them.
  10. Subsections 12(4), (5) and (6) stipulate that under the pay equity plan of the employer, maximum pay adjustments are limited to the lesser of one per cent of the employer's annual payroll or the amount needed to achieve pay equity. This would appear to mean that if the pay police impose a pay equity plan upon the employer, the plan could provide for any wage increase deemed necessary to achieve so-called pay equity.
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11. Subsection 12(6) provides for retroactive adjustments in compensation which can exceed the one per cent figure. Although retroactive adjustments are mentioned elsewhere in Bill 154, for example, subsections 16(3), 24(5) and 24(6), subsection 12(6) stands alone and does not refer to them. Therefore, this section as well would appear to provide for unlimited retroactive wage increases.
  12. Section 30 provides that even if the pay equity commission causes the bankruptcy of employers by imposing uncompetitive wage levels on them, the employers may not sue the commission or its employees for damages. Similarly, employers have no way to recover the costs of defending themselves against frivolous or vexatious complaints.



13. Clause 35(g) could allow a handful of cabinet ministers, through an order of the Lieutenant Governor in Council, to raise the minimum adjustment of compensation to any level they deem desirable.

I will now deal with the section on how the market sets wage levels. Annual wage levels are determined by a wide variety of parameters including experience, education, training, location, weeks worked during the year, full-time or part-time status, degree of unionization, uninterrupted years in the work force and occupation. Perhaps the single most important determinant in setting annual wage levels is the law of supply and demand. Blacksmiths are out, systems programmers are in.

The whole premise behind Bill 154 is that there exists widespread discrimination by employers. It is worth noting, however, that while the Ontario government is prepared to pass what is probably the most interventionist bill in the province's history, it has not produced a study showing that the market is not fairly setting wage levels of individual workers in Ontario.

In other words, the Ontario government has produced a solution without showing that there is a problem. On a national basis, the Fraser Institute has produced a report which shows that the market does fairly set wage levels based on reasonable parameters. To my knowledge, this report's conclusions have not been refuted.

Let us look at the effects of Bill 154 if it is passed. If the bill is passed, all three parties represented in the Ontario Legislature will send out in a most dramatic way this message: They neither understand nor trust the free market, free enterprise and business. For the past five years, net investment in Canada has been falling. Unemployed Canadians need jobs and those jobs will come from increased investment. Ontario is the economic engine of Confederation; Bill 154 will pour sugar in its gas tank.

If Bill 154 is passed, investors will find far more welcoming climes just across the lake. Aside from the chilling effect on future investment, the passage of Bill 154 could have disastrous effects on existing businesses. One can only expect interventionists to implement Bill 154 with the same zeal that they have displayed in promoting and drafting this bill. That zeal, combined with the arbitrariness and injustice outlined in this brief's first section, could spell great danger for this province's economy.

If Bill 154 passes, yet another bureaucracy will be established. That translates into more red tape and, ultimately, into higher taxes or a bigger deficit. In other words, Bill 154 means bigger government. Unjustified pay increases will result in higher prices. In most cases, that will mean fewer goods or services bought and produced. That means fewer jobs. Those workers most likely to find themselves unemployed are those in marginal jobs which are paid the least. This is why both the Toronto Star and the Macdonald royal commission have opposed legislated pay equity.

What needs to be done: I refuse in this brief to offer compromises and tinkering. This issue is so important and so fundamental I am not going to address it in that fashion. This is what I propose:

1. Before proceeding any further with pay equity legislation, the Ontario government must determine whether the market is working in setting wage levels in the province. This must be done through a study undertaken by a neutral team of experts whose conclusions will be accepted and believed.

2. If the study finds a problem, the government must decide to implement a solution, if any, which is proportionate to the size of the problem.

3. Once a solution, if any, is proposed, the government should undertake to study the solution from a number of viewpoints: constitutionality, the cost to the taxpayer and the effect on competitiveness and unemployment, etc.

The last point I make may have been covered by an announcement I heard before I began, but I am going to cover it anyway because it may not have been covered.

4. The Ontario government, which has pledged to work for more open government and which has introduced a freedom-of-information bill, should stop covering up some critical information on pay equity legislation. David Glennie is the senior policy adviser for the Ontario women's directorate, which is responsible to the Attorney General. We recently approach Mr. Glennie and asked him for access to background research, statistics and analyses on which Bill 154 was based. Mr. Glennie immediately responded that the material was confidential and could not be released.

More specifically, he was asked whether the directorate had done any case studies on how Bill 154 would affect different industries and/or particular businesses within an industry. He replied that there were several studies done but they were confidential. Even though it was suggested that he could delete from the information any details that could identify companies, Mr. Glennie was adamant in his refusal to release information. He was asked whether the directorate had done any statistical analyses of the alleged discriminatory wage gap. He replied that such information was considered to be a cabinet document and, therefore, confidential.

What is the Ontario women's directorate hiding? It would be reasonable to conclude that if case studies of businesses had shown little effect on their competitiveness, they would have been released with some satisfaction. Mr. Glennie's adamant refusal to release the information begs the question: Exactly what is in the case studies, which were paid for by Ontario taxpayers, that is worth covering up? I suggest that all Ontarians and members of this committee deserve an answer to that.

As I prefaced my remarks to that last paragraph, I heard earlier that the government has decided, somewhat belatedly, to release some of the studies upon which it has been sitting since the early fall, which is to be welcomed. I urge you to make sure that the specific case studies that have been done, which show the effect of legislative pay equity upon real businesses, are also released, with specific details deleted if necessary. If those studies have been done, we should have the right to look at them.

Thank you, Mr. Chairman and members of the committee. I will try to answer any questions you have on this brief.

Mr. Ward: I want to ask a question about some of the announcements that have been forthcoming from your association. Is it the view of the National Citizens' Coalition that a wage gap does not exist?

Mr. Somerville: That is right. We believe our view is backed up by very responsible studies and that once a variety of very real factors are taken into account, such as the ones I listed earlier, experience, location, unionization, occupation, etc., the gap does not exist.

Mr. Ward: There is no gender discrimination in wage practices anywhere in this country?



Mr. Somerville: Not proven. Again, I urge you to buy the Fraser Institute study for \$3.95, throw it in front of your economist and ask him to disprove its findings.

Mr. Ward: So the difference in wages between a busboy and a waitress can be accounted for solely on the basis of skill, education, training and socialization.

Mr. Somerville: Supply and demand, unionization, location in the country, etc.

Mr. Ward: Do you think that is strictly a supply-and-demand issue?

Mr. Somerville: Absolutely. I think that market factors are neutral, and when people who are in business are producing goods or a service, they are in that business to make a profit. I do not believe that, in general, business people care who is producing the goods or the service, as long as the quality is right and the price is right.

Mr. Ward: The public sector employee in the city of Windsor, where a gardener is getting \$2 more an hour than, say, a stenographer who has a higher level of training, education, and responsibility, is solely the victim of market forces? Why do market forces come into play there?

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Mr. Somerville: The problem with governments is that they tend to foul up the markets. I would suggest in that scenario, though, that is a prime candidate for privatization, and they would probably be able to get the gardening done a lot cheaper.

Mr. Ward: But that is not the case in the busboy/waitress. That is strictly market force.

Mr. Somerville: I put it to you this way: Why would an employer overvalue the wage of one employee and undervalue the wage of the other? It does not make sense. If the employer overvalues the wage of one worker, next door there is going to be someone producing the same goods and service who is not going to overvalue them, and the guy is going to be out of business pretty soon. The same goes with undervaluing the thing. If it is undervalued, he is not going to get people to work for him.

Mr. Ward: I put it to you: In some of those circumstances, the only differentiation between those positions is gender.

Mr. Somerville: I say there is no proof of that.

Ms. Gigantes: Could I go into the same line of questioning, Mr. Somerville? Why is it that it took legislation in this province for employers to stop using the practice of running ads that said, "women wanted," "man wanted"?

Mr. Somerville: Why did it take so long to run those ads?

Ms. Gigantes: Why did it take legislation to remove that employer practice?

Mr. Somerville: First, I think it is appalling that there is



legislation providing for that. Why the hell should the government be telling employers what they can print in a newspaper?

Ms. Gigantes: And what is it employers are looking for if they advertise, "woman wanted" or "man wanted"?

Mr. Somerville: Presumably, they want a man or a woman.

Ms. Gigantes: Do they not want an employee?

Mr. Somerville: Absolutely. Are you trying to--I do not understand the line of your questioning.

Ms. Gigantes: In the past, employers have engaged in practices which suggest that, in their view, there is a kind of apartheid that should be used in different kinds of jobs and that if you are advertising for a certain kind of job, the person you want to hire is a woman. We know that pattern has been reflected in wage rates for such jobs, and we know that recently, since that style of advertisement has been removed, for example in the busboy and waitress classification, employers in the private sector are now starting to hire young women as buspersons and young men where they previously would have hired only young women.

What is it that employers were looking for before that they cannot get now?

Mr. Somerville: Let me say this. First of all, I would think an employer is primarily interested in getting somebody, a worker, to do the right job at the right price. I think that if they prescribe that they want a particular kind of worker, that is up to them. If you are saying that you should be forcing employers to hire the kinds of workers that you think are right, then I say that is wrong.

Ms. Gigantes: I would quite happily force employers to consider hiring black people, hiring women, hiring all types of people, and I would force them to think about the implications of advertising, "whites only," "woman wanted."

I ask you what it is that employers are after when, in the past, through the private market, time and again, they have suggested by their ads that they view certain kinds of work as work for which only women should apply and certain kinds of work as work for which only men should apply. We know men and women come in various categories, sizes, strengths, ranges of intelligence, experience, education and so on. What was it that employers were after?

Mr. Somerville: I do not know. Presumably, that was in the mind of each of those employers.

Ms. Gigantes: It was a very strongly practised habit of employers to make that kind of advertisement when they wished to hire somebody, and we have only recently got rid of it. We certainly have not changed hiring practices and, frankly, I am amazed to have group after group representing businesses come before us to tell us the problem as far as women's wages are concerned is something women can rectify by pulling themselves up by their own sandal straps.

It seems to me the evidence is that, both historically and economically, even to have employers think about cross-hiring in terms of sexes and their

idea of which sex should be doing which job at which kind of rate, we have to bring in legislation so they do not publicly advertise that they have an apartheid view of jobs and wage rates.

Mr. Somerville: That is pretty emotive language.

Ms. Gigantes: I feel emotive about it.

Mr. Somerville: We have to distinguish between two concepts here and it is very important to distinguish between them, because some of your comments earlier could be misconstrued. It is silly for an employer to discriminate in any way in hiring a worker. It just does not make sense.

Ms. Gigantes: Why do they do it?

Mr. Somerville: Having said that, I think it is a breach of individual freedom--and that is the kind of thing we cherish in our society and that sets us apart from other kinds of societies in the world--for the government to intervene and start dictating to that employer whom he or she should be hiring.

Ms. Gigantes: Why is it that employers have freedoms and employees or potential employees do not have the freedom to be considered because of their sex, colour, nationality, national origin or a number of items for which we have had to prescribe in law that employers will not discriminate?

Mr. Somerville: That is not true. You are saying that because a particular employer may foolishly discriminate, therefore all the people in that class are discriminated against entirely throughout the entire economy.

Ms. Gigantes: They are vulnerable to discrimination by employers.

Mr. Somerville: I do not accept that.

Ms. Gigantes: You must understand that for us, considering this kind of legislation, we see a balance of freedoms, Mr. Somerville. The preponderance of the need for expressing the freedoms of employees, the freedoms of labour if you will, appears to us quite strongly to suggest that we have to have this kind of legislation; that voluntary efforts by employees, organizations of employees, government suggestion and perhaps even example have not been sufficient to remove what we can all recognize, even if you cannot, as deep-set discrimination.

Mr. Somerville: Maybe it would be worth while to repeat to you something I said to Bob Rae the other night in a debate I had with him, which was that I do not mistrust your motivation, I do not think it is maliciously intended or anything else, and I am sure you are seeking to do something you think would benefit a significant number of people. We are talking about a means and the fallout.

I put it to you that there is a very broad spectrum of opinion, ranging from the Toronto Star to the Macdonald Royal Commission on Economic Union and Development Prospects for Canada to the National Citizens' Coalition which is saying--

Ms. Gigantes: We have to remember the Toronto Star is an employer.

Mr. Somerville: If I may finish, it says if this kind of legislation

goes through, it is going to be a classic case once again of unintended consequences. But the people you care about the most are going to be the people who are hurt; just the same way that in the mid-1970s people who had compassion and who worried about rental accommodation for low-income people said the solution is to put on rent controls. Look where we are now.

The people who are the biggest victims right now are the people who cannot afford the \$1,000 black market fee for getting the right to bid on an apartment. We are going to have exactly the same problem here.

Ms. Gigantes: Without getting into the question of rental legislation--

Mr. Somerville: I was purely using that as an illustration--

Ms. Gigantes: Mr. Chairman, I think Mr. Somerville understands part of what is being raised in terms of principles here, and I do not know what it would take to convince Mr. Somerville that the practices we have seen constitute their own proof of discrimination.

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The Acting Chairman (Mr. Dean): I guess that is a rhetorical question, and I do not expect Mr. Somerville to answer that.

Mr. Somerville: I go back to what I said in one section of my brief. There is no objective proof that it exists in Ontario. There is none. If there is, please show it to me.

Ms. Gigantes: There are millions of Ontarians who do not agree with you.

Mr. Polsinelli: You have chosen to use, to say the least, some very colourful terminology to describe certain aspects of this legislation. One of the things you talked about are the so-called draconian powers that the review officers would have under this legislation. Perhaps you can explain to me what greater powers the review officers would have than, say, the Ministry of Labour inspectors under the Occupational Health and Safety Act, perhaps the officers under the Ontario Human Rights Commission or perhaps even the inspectors under the employment standards branch of the Ministry of Labour.

Mr. Somerville: I am not competent to comment on most of those areas because I do not know what their powers are. As far as the human rights legislation goes, they do not have the power to search, seize and remove records without a warrant. Having said that, I will say that even if these powers were delegated to various inspectors and bureaucrats under these other areas, to me that makes this example no less draconian. For me, the answer is to roll the others back; do not make it worse by putting these on.

Mr. Polsinelli: Are you suggesting perhaps that if a Ministry of Labour inspector under the Occupational Health and Safety Act walks into a company and finds a situation where there is an imminent peril of danger, he should not have the right to issue a stop-work order?

Mr. Somerville: I am not going to get involved in that scenario, because that is completely outside my area of experience.

Mr. Polsinelli: I do not want to get argumentative, but on the one



hand you tell me that these are draconian powers and then, on the other hand, you tell me that you do not know what you are talking about. It is as simple as that.

The Acting Chairman: I do not think that is the question.

Mr. Somerville: No, I think it is an unfair comment.

The Acting Chairman: Perhaps you are being unkind to the witness.

Mr. Polsinelli: No, with the greatest of respect, I am not being unkind. If the witness tells us that under this legislation we are giving the inspectors or the review officers draconian powers, then he should know what other rights and powers inspectors have under similar pieces of legislation. If he does not know that, then he does not know what he is talking about.

The Acting Chairman: I think he answered the question in the sense that he said that if they are draconian, then they are equally undesirable, but he did not pretend to have any expertise in that area, which I think is wise. Maybe politicians would sometimes do better if we did not pretend we knew about things when we did not.

Mr. Ferraro: Thank you for your presentation. I should tell you, and I do not mean it in an insulting way, that I consider myself a very strong free-enterpriser, but I want you to know I could not tie your shoes and I admire your courage.

I have essentially two questions. One is about the association itself. Can you tell me how many people you represent?

Mr. Somerville: We have about 35,000 supporters nationally.

Mr. Ferraro: Do you have that broken down gender-wise?

Mr. Somerville: No. We do not particularly care who our supporters are as long as they believe in more freedom through less government.

Mr. Ferraro: The conclusion to that slogan would be that if there were no government, you would have total freedom and you would be out of a job.

Mr. Somerville: No, we did not say "no government"; we said "less government."

Mr. Ferraro: So some is acknowledged as necessary. You categorically do not believe there is any proof substantiating that there is a problem; however, individuals may want to define it. Are you aware that at least to some degree the Canadian Federation of Independent Business has acknowledged and alluded to the government's green paper where it has quoted some statistics that, in essence, show there is a problem.

Mr. Somerville: What did it admit was a problem?

Mr. Ferraro: In its brief to us this morning, the CFIB acknowledged that the government's green paper in itself acknowledged that there were some inadequacies; however, they want to interpret the net inadequacy. Are you aware of the fact that the green paper has indicated there is some disparity, or are you just totally--have you read the green paper?

Mr. Somerville: Yes, I have. Are you saying that it contains evidence?

Mr. Ferraro: It indicates that there is a disparity and, indeed, some bias.

Mr. Somerville: Sure. Ian Scott said it numerous times, but I hardly think that constitutes proof.

Mr. Ferraro: That is not proof enough?

Mr. Somerville: I ask you, please, to consider this because it is very important. I repeat once again that the study was done by some top-flight economists using federal government data, an analysis of the so-called wage gap in Canada. They put the report out and showed no so-called wage gap. It has not been refuted. If it is wrong, it should be easy; prove it wrong. Give it to your economists in government and tell them to tear it apart and show where it is faulty. That is all it takes.

Ms. Caplan: You are referring to the Fraser Institute report?

Mr. Somerville: That is right.

Ms. Caplan: You said they hypothesized that there was no wage gap?

Mr. Somerville: They did not hypothesize. They used census data drawn from Statistics Canada and analysed it with a number of factors that establish wage levels in society, such as training, unionization and occupation. They threw it through the computer and there was no wage gap.

Ms. Caplan: They used American data?

Mr. Somerville: No, Statscan census data.

Ms. Caplan: I understand you are supporting the recommendations of the Fraser Institute?

Mr. Somerville: I am just saying it is the only study I know of in Canada that has done a technically responsible job of trying to find out if there is indeed a wage gap. They found there was not. I have not seen it refuted.

Ms. Caplan: I would like to take a moment and give you some of the information I have about the data they had. I find it particularly interesting that the data in this study compared unmarried women to unmarried men in the labour force. If you look at the demographics, the age, the length of time in the work force, the education and experience of women compared to the age, length of time in the work force and experience of men, you find that the women are more highly educated, older and, have been in the work force longer than unmarried men. In fact, I suggest that is a wage gap. The women's work would then be undervalued since they had been longer in the labour force, had better education and were earning the same as men who had not been in the labour force as long and were younger.

Mr. Somerville: I have not got it in front of me. I read it earlier.

Ms. Caplan: I believe that is the response and I think it suggests there is a wage gap if you look at their comparisons.

Mr. Somerville: They took into account a whole variety of figures; it was not just unmarried singles. They took into account a number of different parameters in making this study. All I can do is, once again, suggest what I did before, that you tear it apart and disprove it.

Ms. Caplan: I have had a look at it, and the information I have is that in fact they do suggest a wage gap because of the difference in demographics of those they compared.

Ms. Fish: I am not entirely certain what Mr. Ferraro was telling us about his ability to tie shoelaces, whether he was suggesting a skill test for equal value here--

Mr. Ferraro: You wear loafers; you would not know.

Ms. Fish: I want to ask just one or two questions based on the brief in front of us. In your opening remarks, you made a fairly strong point to us that you did not want to deal with individual recommendations for change of the bill because the bill as a whole was a concern. But on the front page, you indicated a series of illustrations that you called "Violation of Rights."

Mr. Somerville: Can I clarify what you just said?

Ms. Fish: Sure.

Mr. Somerville: I said in my preamble that I did not intend to recommend, as a conclusion, that you just fiddle with some parts of the bill. I think this is so badly flawed, interventionist and dangerous, it should be held up until these other things are settled. To illustrate the things I found wrong with it, I went through specific sections, but I am not suggesting you just fix these little sections. I am suggesting that the entire concept is flawed and that it will have very negative consequences.

Ms. Fish: That was indeed the direction. I was going to ask whether you were suggesting, on behalf of your organization, that these areas required redress or whether you simply maintained that there was no amending possible to the bill that would meet your concerns.

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Mr. Somerville: Yes. I think the whole thing is fundamentally flawed. The three areas deal with the bill itself and then the concept of it. We are saying the bill itself is terribly flawed. It violates rights. It throws away due procedure and a lot of other things. Just on its own merits, you should not go ahead with it, but also in a deeper sense, because of the myth that underlies it, you should not go ahead with it.

Ms. Fish: I am one of those on the committee who has raised repeatedly the thought that members ought not to debate with deputants but rather should ask questions, so I will hold back on my strong temptation to debate that point.

I will turn instead to an understanding of the exchange you had a few moments ago with Mr. Polsinelli, when he asked you about similar powers being exercised by inspectors in occupational health and safety or in the labour standards branch. I understood you to say that while you did not know of their specific powers, your concern was not a consistency between the powers but rather that any exercise of such powers would be inappropriate. Is that a fair conclusion?



Mr. Somerville: That is right. In our society, there are special powers given to police. Even policemen do not have the right to enter premises without a warrant, unless they are in hot pursuit, unless there is a robber going in or something, yet we are delegating these powers to bureaucrats. It is crazy.

Ms. Fish: To the extent that there may be an exercise of power, for example, of occupational health and safety inspectors--and I am not asking you to be expert in what powers they may have and what they may exercise--are you prepared to contemplate some differences in the need to exercise certain powers or are there certain powers that, under no circumstances, do you consider should be exercised by government or government representatives?

Mr. Somerville: I have just partially answered your question implicitly. I think everyone would agree that if there is an armed robber who runs into a store and there is a policeman who sees him doing it, then it is reasonable for the policeman to chase the robber in the door and try to apprehend him. There are certain extreme circumstances where those kinds of delegations of powers are warranted, and I stress "extreme." I certainly do not think they are warranted in this kind of scenario.

Ms. Fish: The question of the wage gap is a final area to pursue. One of the members on the committee--and I am sorry to say who it was escapes me at the moment--raised with you the question of the Canadian Federation of Independent Business speaking to the wage gap. My recollection of that from this morning was a submission that said there is a gap between men and women, but a relatively small portion of the gap was attributable to systemic gender discrimination.

Just so I am clear about your position, are you saying there is no wage gap, or in your view, no wage gap attributable to gender discrimination?

Mr. Somerville: There is no wage gap attributable to gender discrimination. If I could illustrate the point, if someone gets the bright idea to compare workers over 35 with workers under 35 and find out what their average earnings are, instinctively, we all know we will find out that workers over 35 probably earn more.

We would all think it was kind of silly if they said, "The younger group is being discriminated against, and we had better bring in some equity laws to make sure we give them all raises." We would know instinctively that is kind of silly because of experience and all the rest of it that makes the people in the older wage group usually earn more.

Similarly, there is a series of factors that explains differences in wage levels, whether you are a man or a woman, on simple market forces. If they happen to impinge more on one or the other, then that is something you should address yourself to; but do not muck around with the market, because all you are going to end up doing is really creating a problem.

Ms. Fish: To pursue that point, if I might come back to the line of questioning on the database for the Fraser Institute study, in your illustration, precisely the reverse conclusion was found in the Fraser Institute study. They examined men who were in the work force for a shorter period of time, were younger and had a lower education and women who were in the work force for a longer period of time, were older and had a higher education and they did not find a difference in wage rates.

If the usual expectation would be that being in the work force longer,

being older and having a higher education would lead, as a class, to a higher wage rate, how do you deal with the database in that finding?

Mr. Somervillè: The first thing is that they have done more than one study, so we could be talking at odds here. That aside, there are also some other factors that determine wage levels, for instance, unionization rate, occupation, the amount of overtime, the amount of hours worked. There are several other factors that also determine wage levels.

Ms. Fish: I have no further questions.

Mr. Baetz: My question relates to the makeup of your organization, the National Citizens' Coalition. I wonder if you could describe for us, briefly, who are some of the members and so on. I have assumed that a lot of businesses are members, or individual businessmen, I do not know. Perhaps you could clarify that for us.

The reason I ask the question is that we have had a number of delegations here representing various business sectors in the country: the Canadian Federation of Independent Business, the Retail Council of Canada, the Retail Merchants Association of Canada and so on. All of them certainly recognized that there was--whatever you want to call it--a gender wage gap, that there was a problem. In many cases, they did not agree with the solution that is being proposed in Bill 154, and we recognize that. They tend to think we are trying to swat a fly with a sledgehammer, but they certainly did recognize that there was a gender wage gap.

In view of their perception here, I wonder why it is you are such a lone voice, or at least you appear to be a lone voice. You do not seem to have the support of the business community. Whose support do you have?

Mr. Somerville: Our group is used to being a lone voice, incidentally. We feel comfortable with that.

Two points here: One is that I think we must zero in very carefully on one word, and that is "discriminatory." It is quite an important word. We also have to discuss proximate causes and other causes. If I tell you that people who are murdered with handguns are killed because a finger pulls a trigger, you will say, "Yes, that is true, but that doesn't exactly tell the whole story."

Similarly, I am saying the statistical studies that have been done in the past showing this wage gap, in fact, show the gap because of market forces. Those market forces affect certain groups of workers more than others, which is why it shows up. But the critical factor is not the sex of the person. It is the market factor: the degree of unionization, weeks worked during the year, hours per week, etc. That is number one.

Second, you are absolutely right. We do differ with the business community in a number of areas.

Mr. Baetz: You do differ with the business community?

Mr. Somerville: In a number of areas. Yes, that is right. For instance, the only common thread that holds our supporters together is our motto, "For more freedom through less government." That is it, and we have people from all walks of life who are supporters.

We differ with businesses in a number of areas. For instance, we oppose



all kinds of subsidies and tax breaks for businesses, and little deals. We oppose state-granted monopolies to businesses. A lot of businesses lobby for those things, but we are agin that. So yes, there is a difference.

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The Acting Chairman (Mr. Charlton): I am next on the list, so I am going to take my opportunity to ask my questions.

You are suggesting, on the one hand, that there is no problem. On the other hand, you are suggesting significant, dire consequences as a result of the implementation of this legislation. If there are no problems, what is the commission going to find to cause the dire consequences you are predicting?

Mr. Somerville: It is because of the effects of what the pay equity commission will do when it starts telling employers what to pay their employees and raising wages to uncompetitive levels.

The Acting Chairman: When it starts to tell them based on a set of criteria.

Mr. Somerville: That is right. On its own arbitrary criteria, it tells employers what they should be paying their employees. If their wages are raised to uncompetitive levels, as is quite possible, that is going to have very bad fallout.

The Acting Chairman: On page 3 of your brief, you are predicting a whole range of dire consequences, but you have not seen the impact studies yet.

Mr. Somerville: No, I would love to see them.

The Acting Chairman: Have you done studies you can provide to the committee to substantiate the consequences you are predicting?

Mr. Somerville: I go to three sources for that. One is a study that was done for the Macdonald royal commission on so-called pay equity. Another one is the Liberal Toronto Star, which came to the same conclusion. I think that rather strengthens our stand.

The Acting Chairman: I am talking about statistical studies. I am not talking about editorial comment.

Mr. Somerville: The third thing is simple common sense. When you raise the price of goods, you are going to decrease the demand for them; when the demand decreases, not as much is produced; and when not as much is produced, people get laid off. That is why, for instance, the president of the International Ladies Garment Workers Union in the United States came out opposing pay equity down there in the private sector. He knew that if it was imposed in the US garment industry, a lot of his members would lose their jobs.

The Acting Chairman: Essentially, you are telling us that, in spite of your intrigue with facts in terms of whether there is a problem and the need for this legislation, you have none that you can present to us in terms of the consequences you are predicting.

Mr. Somerville: No, I do not pretend to have any statistical backup right now.

The Acting Chairman: Thank you.



Mr. Somerville: I hope the Ontario government comes out with these case studies, if it has them in its hands.

The Acting Chairman: Would you be prepared to alter or withdraw your comments about the consequences, if the statistical studies show they will not happen?

Mr. Somerville: I doubt very much that they will, because that would contradict economic laws.

The Acting Chairman: It would contradict you.

Mr. Somerville: No, it would contradict--

Ms. Caplan: As a supplementary question, would you agree with the statement that, if you have an employer who does not, within the work force, have a job evaluation system which is gender discriminatory, then this legislation would have no impact on him?

Mr. Somerville: Could you repeat that, please?

Ms. Caplan: If there is an employer, a business or an establishment where the job evaluation scheme is not gender discriminatory, then this legislation would have no impact on them.

Mr. Somerville: That all depends on whether its guidelines meet the arbitrary guidelines that are set down by the Ontario cabinet.

Ms. Caplan: This legislation is designed only to deal with a job evaluation scheme which highlights gender discrimination. Within a work force, you have suggested there is no wage gap. I am suggesting to you that, if you had an employer, and there are many who have evaluation schemes that are not gender biased, this legislation will have no impact on them at all.

Mr. Somerville: No, I do not think that would be true. That assumes the schemes these employers have will meet the criteria of the guidelines set down by Ian Scott and two or three of his colleagues in cabinet. I do not think we can make that assumption.

In addition to that, I have absolutely no problem at all with employers setting up their own little pay equity schemes in-house and using them to set their own wages and all the rest of it. If they want to set their wages by lottery, that is their prerogative. I am just saying the wages should not be imposed.

Mr. Polsinelli: Mr. Somerville, I reflected upon the remarks I made earlier and, in retrospect, I do agree with the then acting chairman that they were unkind. I would like to offer my apology, rather than as an excuse, in the form of an explanation. I unfortunately assumed that, prior to launching a \$100,000 campaign talking about pay police, you would have familiarized yourself with the rights that other government agents and inspectors have. That not being the case, I still think my comments were unkind and I do apologize.

Mr. Somerville: That is very good of you. I disagree with you. We read the bill. We know the powers the pay police have. We really believe very strongly that, in this instance, they are completely unwarranted.

The Acting Chairman: That is it. We have no more questions. We thank you, Mr. Somerville.

Mr. Ferraro: Can I ask one more question, or is that it?

The Acting Chairman: That is it. Before the committee runs off, I have a couple of quick announcements. First, the committee is not meeting until two o'clock tomorrow. There are no presentations to be heard in the morning and we have four presentations starting at two.

Second, materials from the parliamentary assistant's announcement earlier have been tabled with the committee. One set will be available to each caucus tomorrow. We only have one set now. It is going to be prepared for us to provide one set to each caucus.

Ms. Fish: What time will that be available?

Clerk of the Committee: If anyone wants to look at the materials, they will be available in my office until we get the other copies.

Ms. Fish: I would like them as early as possible.

Dr. Todres: We will phone and see how soon we can get them. We will Xerox them during the night.

Ms. Fish: Okay. Would it be possible to look first thing in the morning? Evelyn, I assume that your caucus copy will go to you. In any event, my caucus copy will go to me. Is it possible for you to deliver it directly to my office?

Dr. Todres: Yes, we can do that.

The Acting Chairman: The committee is adjourned.

The committee adjourned at 4:16 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

THURSDAY, FEBRUARY 26, 1987

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Ferraro, R. E. (Wellington South L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Society of Ontario Advertising Agencies:

Chadwick, P. M. J., President

From the Charter of Rights Foundation:

Weldon, L.

From Peat, Marwick and Partners:

Rives, J. P., Director of Compensation

From the Canadian Tooling Manufacturers' Association:

Taylor, B. R., Secretary-Treasurer

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 26, 1987

The committee met at 2:08 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, I recognize a quorum; representatives from the three parties are in attendance. In the light of the afternoon schedule, I would like to get under way with our delegations. The first delegation is from the Society of Ontario Advertising Agencies, and I believe two representatives are here representing the views of the advertising agencies, Philip Chadwick, the president, and Mark Dutton, the treasurer. You can take seats right in the front if you will, gentlemen. This is number 37 in the material you have before you.

Ms. Gigantes: Before we begin, can I ask a couple of questions? I asked yesterday of the parliamentary assistant whether he would investigate whether there were executive summaries from the Premier's Business Advisory Committee on Pay Equity and the Premier's Labour Advisory Committee on Pay Equity.

Mr. Ward: Not in our possession.

Ms. Gigantes: Whose possession are they in? They were presented to somebody.

Mr. Ward: The executive summaries?

Ms. Gigantes: Yes.

Mr. Ward: Not that I am aware of.

Ms. Gigantes: They are not in the hands of the directorate? They may be in the hands of the ministry.

Mr. Ward: No, they are not in the hands of the ministry.

Ms. Gigantes: Is that not interesting? I will try to understand where they went and come back to you on this.

The second item was that the parliamentary assistant told us yesterday that the legal opinions that were being sought by some of the business representatives who came before us were under freedom of information subject to privilege of the client-solicitor relationship.

I would like him to refer to the section of Bill 34 that deals with that matter, that says the head may disclose. As there is no commissioner to whom we can appeal at this stage, if there is a decision that the judgements, opinions or whatever shall not be disclosed in this case, I wonder if we could have the reasons for that, as we would expect to have under an application.



Mr. Ward: I think I indicated to you yesterday that the Attorney General (Mr. Scott) received a letter from the Canadian Federation of Independent Business in regard to the whole constitutional question. I indicated that he would be responding directly to that request.

Ms. Gigantes: Apart from that, my understanding is that the opinion being sought or that may have been given on the question of this legislation may not have referred simply to the matter of constitutionality, but to other matters.

Mr. Ward: I am not aware of that, but in my limited experience, a solicitor opinion from within a ministry through its legal counsel is of a verbal nature. If it is written, I believe it is protected under solicitor-client privilege which the client may choose to waive.

Ms. Gigantes: No. That is not the way Bill 34 looks at the matter. In fact, it would be appealable under Bill 34 to the commissioner, and so one would expect on an appeal to have somebody else look at the matter. Given that we do not have that structure in place at the moment, I think it would be reasonable for us to have some reasons advanced as to why, when there is discretion on this matter under Bill 34.

It was not clear to me that the opinions being sought were necessarily opinions that have been rendered by ministerial staff, but rather there might have been an outside legal opinion sought. I am not sure of the status of an internal legal opinion, whether that is considered a solicitor-client relationship. I do not know what constitutes a relationship, whether you have to pay for it or what, but I think this matter deserves a little bit more investigation.

Mr. Ward: I would be happy to look into it further, but I want to reiterate that, in my opinion, neither the ministry nor the directorate was under any obligation to release the studies that were released yesterday in the context of existing practices and policies; that all these matters were reviewed in the context of proposed legislation that has yet to be enacted, unless it relates to those legal opinions. I would be happy to go back and take another look at it, and I will report further.

Ms. Gigantes: I appreciate that. Can I also say that the material--

Mr. Chairman: We are now at a quarter after two. I have allowed a little bit of time to discuss these important matters, but we do have invited delegations before us.

Ms. Gigantes: Simply one other point.

Mr. Chairman: If it is very brief, and I mean brief.

Ms. Gigantes: Exactly. I would like to thank the parliamentary assistant for the release of the reports that we received yesterday or today. They have a lot of very important information.

Mr. Chairman: Thank you. With apologies to our invited guests who will now be making a presentation before us, I welcome you, gentlemen. We appreciate your taking the time to share with us your views on the issue of pay equity. Whenever you are ready, you can go ahead with your presentation.

I should indicate that approximately half the time, if you can so

engineer your address to us, should be given for your remarks, and the balance of the time is normally left for questioning by the members of the committee. Govern yourself in that fashion; we can go from there.

#### -SOCIETY OF ONTARIO ADVERTISING AGENCIES

Mr. Chadwick: The Society of Ontario Advertising Agencies welcomes this opportunity to appear before the committee. We, as a group, appreciate the good intentions underlying Bill 154. The advertising industry as a whole is an equal opportunity employer in every sense of the word, with men and women actively involved in the ownership, management, creative and marketing functions of advertising agencies on an equal footing in those capacities. This is a long-standing situation in advertising agencies, and I think it is quite well known that agencies probably employ as many women as men and that their career prospects within the industry are also equal.

However, the society cannot support Bill 154 in its present form for the following reasons. The legislation's arbitrary and subjective guidelines tend to discriminate against service industries where individual merit, performance and productivity are central to individual earnings. This is particularly key to agencies where someone with a year's experience can be paid as much as someone with 20 years' experience if the individual's work is sellable. Whether it is a male or a female is of no real consequence.

Bill 154's blanket assumption of employer discrimination, which cannot be justified on the basis of the available evidence, imposes a burden of proof on employers in dealing with employee complaints of pay discrimination which is inappropriate, arbitrary and quite probably unconstitutional.

Bill 154's definition of pay equity, based on a complex and arbitrary system of male and female job classes, will lead to inconsistent and even contradictory rulings for businesses in comparable market situations. In particular, subsection 1(4), which permits obsolete sex stereotypes to be the basis for decisions of the Pay Equity Commission of Ontario, threatens to make a travesty of pay equity. We are especially sensitive to this sex stereotyping. We are continually being attacked for promoting this in advertising. We are always on our toes for this problem and try to avoid it.

The pay equity commission, in its combined role as employee advocate, prosecutor and judge, faces a basic conflict of interest. The commission lacks credibility as an impartial arbitrator dealing with complex, subjective and widely varying perceptions of value. This submission contains a number of amendments to Bill 154 which we submit for your serious consideration. We believe these amendments will add to the fairness and evenhandedness of the legislation and bring it into compliance with constitutional requirements and good personnel management practices.

I will give you a little background on the society. We represent 65 Ontario advertising agencies, which account for about 80 per cent of the print and broadcast advertising market in the province. Five per cent of the association's members have more than 100 employees; 70 per cent have between 10 and 100 employees; and 25 per cent have fewer than 10 employees and are therefore exempt from the provisions of Bill 154. Most member agencies are owner-operated businesses, few of which have or need formalized personnel policies and compensation systems.

In fact, the hiring practices of most agencies are done by departmental heads generally. Creative people are hired by creative people, media people



are hired by media people and their salaries are determined within the context of those individual specialties. The advertising industry is driven by individual skills and creativity. Most job classes in our industry, including account managers, writers, artists, media buyers and other creative professionals, involve skills which are highly portable. Employees are highly mobile, and salary arrangements are generally negotiated on an individual basis. Formal performance measurement systems are generally not appropriate to our industry for these reasons.

Bill 154's haphazard application of subjective, government-imposed job evaluation systems does not provide the kind of clarity, consistency, simplicity and fairness that should characterize any attempt by government to regulate basic conditions of employment in the private sector. The society recommends the following specific changes to Bill 154 to meet these basic objectives of equity and fairness.

1. The society recommends that subsection 2(1) be amended to apply Bill 154 only to those employers in the private sector who employ 20 or more employees in Ontario. Companies with fewer than 20 employees rarely have any formalized personnel function. This is certainly the case for most small advertising agencies. The legitimate arguments which have been advanced to justify the exclusion of companies with fewer than 10 employees from the act apply fully to companies with fewer than 20 employees.

The 20-employee floor on the application of Bill 154 would give many companies whose operations are ill suited to formal personnel and evaluation systems the opportunity to make more efficient use of their limited resources on the improvement of employee training, productivity and salaries.

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2. Bill 154 should be amended to firmly establish that all persons charged with an offence under the law are innocent until proved guilty of discrimination. This can be accomplished by amending section 4 of the act. I think it is just a matter of note here that we felt the bill seemed to place employers as the villains. The operative word here is "employers." We do employ people and we should not be automatically penalized or positioned negatively because we are employing people.

The society believes that there is no practical, legal or scientific justification for Bill 154's systematic assumption of employer discrimination on matters of compensation. If the constitutional guarantees of natural justice require the courts to assume the innocence of accused tax evaders and others accused of criminal offences when the facts can be quantified objectively, surely employers should not be subjected to an inferior standard of justice in dealing with a far more subjective matter, the relative value of work done by employees in dissimilar jobs.

There is an enormous difference between a system that requires review officers to prove discrimination and one that requires small business owners to justify fair compensation practices in a system geared to bureaucratic procedures.

3. The society recommends that subsection 1(4), which permits the commission to base pay comparisons on outdated sex stereotypes and historical comparisons, be eliminated. The advertising industry has been subjected to intense criticism in recent years for alleged sex stereotyping. Arguably, our industry offers a greater degree of equal opportunity to men and women than



any other in Ontario. We believe that it is both inappropriate and in defiance of Bill 154's stated objectives to base pay comparisons on patterns of historical incumbency which are no longer reflected in hiring patterns.

4. The society recommends that section 29 be amended to provide for appeals to the courts of pay equity commission decisions. Many of the issues to be determined by the commission are too important not to be subject to independent judicial review. If statutes such as the Canadian and Ontario human rights codes provide for appeals to the courts, the interests of justice demand that Bill 154 make comparable provisions for the commission to be legally accountable for its actions.

5. The society recommends that Bill 154 be amended to provide for full or partial compensation to any employer subjected to a false or otherwise unjustified complaint, subject to the decision of an impartial arbitrator. The law requires substantial unproductive administration costs for companies forced to answer complaints that may be far in excess of any wage settlement required in most smaller firms. These costs will be incurred as a result of section 23, which permits a review officer to order the preparation of a pay equity plan, regardless of the merits of any complaint.

There is ample precedent for such compensation in the federal Income Tax Act, the Ontario Human Rights Code and the Equal Access to Justice Act governing administrative law proceedings in the United States. Basic principles of regulatory fairness suggest that Bill 154 should be amended to provide for compensation, not only for victims of proved pay discrimination but also for victims of overzealous regulatory authorities.

The society recommends that the government refer Bill 154 to the Supreme Court of Canada for a ruling on its constitutionality prior to its proclamation into law. The society notes questions raised by a number of responsible organizations with regard to the constitutionality of several areas of Bill 154, notably its blanket assumption of employer guilt and the reasonable assumption of bias of employers dealing with a pay equity commission that is responsible both for advocacy and adjudication of pay equity issues.

In essence, that is our submission.

Mr. Chairman: If you are ready for questions now, I will entertain them from members of the committee. Ms. Gigantes will be first.

Ms. Gigantes: If we raised the applicability level of Bill 154 to 20 employees, how many of your agencies would then be covered? You gave us a figure for the number of firms between 10 and 20.

Mr. Chadwick: It would be a significant change, certainly. I would be unable to give you an exact percentage, but I will try to estimate. Certainly an additional 30 per cent would probably fall within that category. A lot of industries will run with a staff of fewer than 20.

Ms. Gigantes: You would estimate that recommendation would probably lead to a situation where the bill would apply to about 60 per cent of the firms.

Mr. Chadwick: Is that correct? Yes.

Ms. Gigantes: That is 10 per cent plus 30 per cent.

Mr. Chadwick: Right.

Ms. Gigantes:.Good. Do the largest agencies within your group employ a great number?

Mr. Chadwick: In total; cumulatively?

Ms. Gigantes: Yes.

Mr. Chadwick: Yes. Cumulatively, the larger agencies would constitute the major employers.

Ms. Gigantes: My understanding from the figures we got through the release of the reports yesterday about the application of this legislation to the private sector as a whole in Ontario is that it would apply to 16 per cent of the firms that do business in Ontario. Does that surprise you?

Mr. Chadwick: Yes, it does.

Ms. Gigantes: The figures from those reports indicate that 84 per cent of firms in Ontario have fewer than 10 employees, so the application of the bill, in terms of the numbers of firms it would apply to even now, is quite limited.

Mr. Chadwick: It does surprise me. I can only comment in relation to the advertising industry, of course, but I would say it is a personnel-intensive kind of business. You cannot automate an advertising agency. We are very dependent on an individual's creativity. A lot of people will be working on any individual account. With a staff of just over 10, I am a very small agency. I would certainly like to double my size, as a goal, to increase personal profitability, and I think most agencies would try to function with a staff of at least 20 to be a profitable business.

Ms. Gigantes: Would you say the advertising business, as a whole, is a fair employer?

Mr. Chadwick: I might be a little biased in that, but yes; I would say that is correct.

Ms. Gigantes: If the advertising business, as a whole, is a fair employer, then why do you see any problems for you, as employers, with the application of equal pay legislation?

Mr. Chadwick: Again, we do not have a problem with the concept of equal pay. We would not have any problems with that. But if we are going to have to defend ourselves from a disgruntled employee at our expense, agencies of a smaller size are going to find that cost prohibitive. So they would be encouraged simply to resolve the issue, fair or unfair, to the benefit of the employee, to avoid the cost of having to defend themselves.

I can almost see small agencies being held to ransom by their employees, in essence. There are a lot of subjective calls in advertising. An individual's performance, to an outsider, may appear to be equal to another individual's performance, but the calibre of creativity that individual may be producing may be quite different. As a result, his ability to earn revenues for an agency would be different, and therefore his compensation would reflect that. People know how effective they are to that agency's profitability, and they negotiate their salaries based on that.



It would be a very hard call to say that, because there are two art directors sitting in the same room, one should make the same as the other. If that art director has the ability to come to his employer and say, "Pay me the same, or I am going to make a complaint," and that small business has to pay the cost of responding to the complaint, it is going to be considerably more expensive to us than simply paying the individual. They are probably going to be grudgingly forced to do that.

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Ms. Gigantes: In a case where two art directors were sitting in the same room and had roughly the same job descriptions, if you want to call them that loosely, you would be covered by existing legislation, and an employee could make a complaint now and claim that the work being done was substantially the same. You have not had harassment from employees.

Mr. Chadwick: Perhaps that was not a good example then, although we have never had the problem. I have never heard of the problem arising. Maybe it is the visibility of this legislation or the visibility of existing legislation.

Ms. Gigantes: You talk about high turnover, and I know that is true in all kinds of work. In broadcasting work, journalism, advertising and so on there is a lot of turnover. The people who stick around are generally the best people, because the employer keeps them on staff and does that by giving them what you could call, in fairness, seniority adjustments. There is an allowance in the legislation as it is presented to you now for precisely that kind of system, as long as it is gender neutral.

Mr. Chadwick: We have no problem with that portion of the legislation. In our submission, it is clear that our concerns are the proceedings, the implementation of this legislation and how the onus is being put on the employer.

Ms. Gigantes: You have the same onus on you now under existing legislation that provides for equal pay for equal work, and you were not even aware of that.

Mr. Chadwick: Correct, I was not.

Ms. Gigantes: Because you have not been harassed under it.

Mr. Chadwick: Correct.

Ms. Gigantes: You may not be harassed anyway. I think there are some bogymen hiding around corners on this one as far as employers such as yourselves are concerned.

Mr. Chadwick: There may be some overreaction, but in our interpretation the legislation is pretty severe. If we are overreacting--and perhaps the problem will never materialize--but once the legislation is in place, we do not have any other opportunity to make our point. That is why we are here. We see that there could be potential problems, and heaven forbid, they may never address my business, since I overpay everyone anyway.

Ms. Gigantes: It is interesting that the employers who come before us are always the employers who overpay.



Mr. Chadwick: Yes, we are a generous lot.

Ms. Caplan: The point I wanted to make was that the bill also provides for exclusions based on merit. It seemed to me the concern you have addressed within your industry is one where performance or merit is recognized. I just wanted to point that out to you and ask whether you were aware that was an exclusion.

Mr. Chadwick: I was aware of that. How would that be interpreted in a situation?

Ms. Caplan: I think that would solve your problem if you are talking either productivity, merit increase or bonus based on performance as opposed to basic job rate.

Ms. Gigantes: Could you indicate what section you are discussing here? Do you have a current copy of the bill?

Mr. Ward: Section 7.

Ms. Caplan: Under clause 7(1)(c): "a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and does not discriminate on the basis of gender." That would suggest that if you have a plan which deals with an annual performance appraisal where the contribution of the employee has been outstanding and he or she receives a merit increase, that would be exempt from this plan. I think that would resolve the problem and concern you have addressed.

Mr. Chadwick: How would we have to justify that? How do we have to present that? We would have to have a pay equity plan in place.

Ms. Gigantes: No. You are an employer of fewer than 100 employees.

Ms. Caplan: That is right. It would be informal. If there was a complaint and an officer came in to have a look, you would just show him that you had an annual performance appraisal, that the difference in the wages was based on the performance of the individual and it was a merit compensation, as opposed to a basic job rate. I think that would resolve any of the concerns, particularly when you are dealing in the areas of creativity, which are over and above skill.

Mr. Chadwick: That would seem to address the issue.

Ms. Caplan: I just wanted to point that out to you and make sure you were aware of it.

Mr. Chadwick: Thank you.

Mr. Sterling: I just have a quick question. You asked that section 29 be amended to provide appeals to the court. Are you talking about an appeal where you would have a trial de novo on all the facts?

Mr. Chadwick: I believe that some appeal procedure would probably suffice in our industry. Again, from our interpretation of the bill, to this point we did not seem to have any recourse if we still disputed the decision of the commission.

Mr. Sterling: Do you have any statistics from your society which compares the average pay of men and women?

Mr. Chadwick: Regrettably, no.

Ms. Gigantes:-I have just one question. Would it surprise you to hear the following, which is a result of a survey of small businesses conducted by Hay Management Consultants, one of the international firms that does pay evaluation schemes for companies? This was a survey done in Ontario.

What they found and report is: "A consistent wage gap between male and female workers was found to exist. Wages of full-time female workers were lower than for male full-time workers within each occupational category represented, regardless of levels of gender concentrations within the work group. Throughout the industry groups, women earned on the average from \$1 to \$4 per hour less than men." Does that surprise you?

Mr. Chadwick: It would surprise me, but I understand that is the kind of premise the bill has stemmed from. I do not dispute it, although it seems very high.

Ms. Gigantes: Maybe you should take a close look at your own industry and your own work situation to see whether it would fall into that same kind of--

Mr. Chadwick: I think I can attest that in our industry we work with a supply-and-demand situation. If individuals have talent in this business, they have literally no ceiling on their earning potential. That is why there is so much mobility within the industry. Males or females--and it is very common--will take that skill and just move through agency after agency and increase their earnings, based on their ability. It is a very common technique, and highly thought of people in the business actually brag about the number of agencies they have worked in. It just enhances their marketability.

I have never come across any complaints by any women or anyone about the ability to earn in the advertising industry. They have the option to take their ability out on to the open market, take another job in another agency and increase their earnings, and they do it almost continuously in an upward spiral. It costs us all a lot of money, but that is a fact that happens.

Ms. Gigantes: You may be dealing in an industry category--one of the very few ones--where there is real competition by the seller of labour.

Mr. Chadwick: There is real competition, that is true. We are only as good as the people we have, so there is a real onus as an employer to keep the good people; male or female, it does not matter. The employees try to do as good work as they can so that they can negotiate increases. If they do not, they know they can take their bag of art and move down the street to the next agency and really market themselves. It is a very competitive industry, both in external marketing of services and also internally in holding good people and acquiring good staff.

Mr. Stevenson: I have a question that you may have just answered. We started talking here on another comment you made and I tuned out for a moment. On the question of mobility which you have been discussing, is there any indication that for family reasons or whatever women are less mobile in your industry than men, are therefore caught in not being able to take their skills from one company to another as freely as men do and hence are caught at a lower salary level?



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Mr. Chadwick: I will answer that there are two issues that impact this business, one being that most of the agencies are located right here in Toronto. It is a very urban industry. You do not find wide-ranging agencies through the province. Probably 80 per cent of all agencies in Ontario are located within 10 square miles, as they are right now, so that does not come into play to any great extent.

Second, it is not a very physical industry, so women can work, if they choose, long into their pregnancy and very shortly after in the industry for example. It is a sit-down, cerebral kind of job in all aspects. I do not believe there can be any serious discrimination on that count in any of the areas. I know of many examples of people taking maternity leave from jobs and how the companies cannot wait to get them back. It is not a matter of these people being easily replaced. If they are doing a specific job, they are the people you want doing that job, and it is not like finding a replacement is an easy thing to do. Usually the companies will try to encourage those people to come back into the work force.

Mr. Stevenson: In the last two or three years in your company, how many women in some of the more highly paid categories have you lost because spouses or partners have moved to other cities to take other jobs?

Mr. Chadwick: Personally, I have lost none. It would be very rare. Even amongst the group of agencies I represent, I do not recall a single reference to that situation.

Mr. Stevenson: That sort of thing is then more common in other industry areas than in your area?

Mr. Chadwick: Probably. I cannot comment on whether it is more, but it certainly is not a common situation in ours.

Mr. Chairman: Thank you very much, gentlemen, for your presentation. We will take your views into account when we are reviewing the proposed amendments to the bill.

The second delegation is headed by Leonard Weldon, representing the Charter of Rights Foundation. This is submission 38 on your list of submissions. We welcome Mr. Weldon to our committee deliberations. Whenever he is ready, he can begin.

#### CHARTER OF RIGHTS FOUNDATION

Mr. Weldon: Whatever else may be said about our submission, we hope its brevity will be appealing to you. I recognize that at this stage of your hearings the points we make may have been made by others in different ways, and for that reason we appreciate your kindness and indulgence in listening to my remarks.

We have assumed that the views of many of the supporters of this legislation are already reflected in the bill. We have also assumed that you will receive many submissions from employers who will discuss in detail the bill's consequences, both as to administration and enforcement. We will therefore not try to duplicate the work of others but will discuss the legislation only in the context of the Charter of Rights. We respectfully ask that the committee not assume we either agree or disagree with the parts of



the bill with which we are not dealing in our submission.

We believe it is in the interest of the public at large and the Legislature itself that legislation not be passed which is, on its face, flawed by reason of being in violation of the Charter of Rights or the common law traditions of our country. We sincerely believe that the issues we raise are well founded and that they indicate a need to make appropriate changes in the bill before its passage.

Our submissions are made under these headings and questions: "The Reverse Onus Problem," "The Power of the Commission," "Does the Bill Discriminate Amongst Employers?" and, "Does the Bill Itself Create Sexual Discrimination?"

On the reverse onus problem, section 7 provides for "differences in compensation...if the employer is able to show that," etc. This type of provision is commonly called a reverse onus provision. Whether or not the necessary differences exist is a matter of fact. The difficulty which the provision creates, however, is that an owner is obligated to persuade a review officer that the differences exist. This is a matter of opinion in the mind of the review officer.

The onus is particularly objectionable when one considers that failure to comply with an order that is made by the officer is an offence. A review officer has very wide powers of inquiry, search and seizure and ought not to have the additional benefit of arbitrarily deciding that an employer has not satisfied in his or her mind a reverse onus problem. Considering the powers of the commission itself and the fact that the commission's decisions are final and binding, an employer ought not to be subject to such an onerous provision.

It might seem like an exercise in hair-splitting to complain about this type of provision, but bear in mind that an employer's recourse is to the commission on an appeal. At a hearing before the commission, an employer's position would be vastly different if the question to be decided on the appeal was, first, whether a certain set of facts existed, or second, whether the employer had convinced the review officer that they existed. It is quite a different type of hearing in those two cases. The objection could easily be overcome by deleting the words, "the employer is able to show that," and simply having the section reflect the need to identify a set of facts.

I might add here that an additional difficulty on an appeal before the commission is the onus on an employer to prove to the satisfaction of the review officer's own employers that the review officer should have had an opinion. There is the additional difficulty that the act under section 7 provides that none of the commission's employees is obligated to give any evidence. So you have a decision made as a matter of opinion. There is an appeal against the opinion, and the person who formed the opinion and produced an order, a violation of which is an offence, is not even obligated to take the stand and discuss why he made his opinion or be questioned on it. It is very objectionable.

The commission has total power of enforcement in the administration of the legislation including the power to hear appeals from orders of review officers who are its own employees. Surely it is of the essence of fairness and equity that appeals from orders, the noncompliance with which is an offence, should not be vested in the supervisors of those persons making the orders, particularly when the decision of those supervisors is in the language of the statute, "final and conclusive for all purposes."

This provision, in our view, is akin to conferring on police chiefs and police commissioners the final and conclusive power to determine such matters as whether a police officer was guilty of making a false arrest. It is precisely the same kind of a situation. It is intended in the legislation that the commission would have power to create policy guidelines, and the additional power to hear appeals from its own officers would result in the commission being advocate, enforcer and judge all at the same time. This type of provision should not be allowed to stand even in support of such a program as pay equity.

It is obvious that there should be a body separate and apart from the commission that would hear all appeals from orders of the commission and its officers. Matters dealt with by this legislation are too important to be dealt with in such an objectionable manner. It is also reasonable, considering the consequences of commission policies and decisions, that there should be a further appeal from orders of the commission to the courts or to a totally independent body.

On the question of sexual inequality, it may or may not have occurred to people that it is clear that the supporters and framers of the bill assume that, in all cases of unequal wage treatment, it is the female employee who is paid less. The result is that there is no mechanism by which a male employee can have his pay increased if he is the one discriminated against, except if he qualifies as a member of a female class as defined.

It is apparent that, in an effort to eliminate discrimination based on sex, the bill has created sexual discrimination. Whether there are male workers being discriminated against is beside the point. If, on its face, the bill provides unequal treatment, the Supreme Court might well declare that it offends the Charter of Rights by conferring and withholding rights solely on the basis of sex, which the bill does.

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A great deal of time and effort has been invested in this legislation, and its supporters would be deeply disappointed if it were passed and then struck down. It is surely prudent to have the bill amended so that its protection and benefits would be available to both sexes. If the bill intends to have the sexes treated equally, why does it not say so? How can a bill whose title includes the word "equity" clearly create inequity without the risk of being declared invalid? If sexual inequality is bad, it is bad when practised against either sex.

On the question of the size of the employer, the requirements for establishing pay equity plans and the effective dates for plans are both dependent on the size of the employer. This is obviously based, first, on the assumption that the greatest number of people discriminated against are employed by large employers and, second, on administrative convenience.

We submit that the provisions of the Charter of Rights do not contemplate such distinctions. It is the essence of the charter that all persons be treated equally. This has been part of our common law heritage even before the charter came into existence.

How could administrative convenience be used as justification for equal treatment in a reference to the Supreme Court? Similarly, how could the Supreme Court be persuaded that if society has a problem, the problem can in large part be solved by a law that creates unequal treatment? This type of



provision is particularly objectionable when one considers that failure to comply with the orders of a review officer or the pay equity commission is an offence.

Those are our submissions. We do not take a position either for or against the legislation itself. Our concern is only with whether the efforts of the Legislature produce a piece of legislation that is consistent with the intent of the Charter of Rights.

Mr. Chairman: Thank you very much. You have raised some interesting questions and perhaps added another dimension to our thoughts on Bill 154. I know there are questions that some of the committee members wish to raise with you.

Mr. Polsinelli: Thank you very much for a very interesting presentation. I would like to discuss a number of the points you brought up. On the reverse onus position, I am sure you are aware that section 6 of the legislation provides a positive obligation on the part of the employers to comply with the act. It says that every employer shall maintain compensation practices that provide for pay equity. That is a positive obligation imposed by this legislation on all the employers covered by this act. Section 7 seems to me to provide a mechanism whereby, if there are discrepancies in wage levels, those discrepancies would not be deemed to be based on gender differences.

While I appreciate your comment that this is a reverse onus position, it seems to me that if the complaint is launched under the legislation with respect to an employee, who would be in a better position to prove that the difference in wage between one group and another group is not due to gender discrimination but is due to one of the factors enumerated in section 7?

Mr. Weldon: I think the review officer, given the powers that he or she would have, is in just as good a position as the employer. If you look at the powers of the review officer, there is the ability to require the production of all documents, the ability to interview people and to do whatever is necessary to determine compliance or noncompliance with the act. A review officer doing an in-depth review could very easily end up with the same information as the employer, the only difference between them being a subjective evaluation of the information they have.

Mr. Polsinelli: As I read section 7, it seems to indicate that if anybody can prove that the difference in wage levels is due to one of these items, the employer would be in a much better position to present evidence that the difference in wages is due to a seniority system, a merit compensation plan or whatever. That type of information would not be available to the employees. If the onus were to be on the employer to prove there is a difference in compensation, then it would be properly placed with the employer, who has the information at his fingertips.

Mr. Weldon: As I have said, I think the powers of the commission and its employees to obtain information are so broad that I would assume, if an investigation were properly done, the review officer would have as much information as the employer would have.

Mr. Polsinelli: Let me phrase it one more way. If the amendment you are suggesting is made, that is that the words "the employer is able to show" are deleted from that subsection, would the subsection not place the onus on the employee then to prove that the difference in wages is due to gender-based discrimination?



Mr. Weldon: I do not think so, with respect. An employee who was under the impression that there was an unfair practice would make a complaint. The employee would not have to prove anything. He or she would simply say, "I believe I am being discriminated against," and cite some information about what he or she knew the fellow employee was getting. At that point a review officer would come in and make all the inquiries. It would be a very easy process for an employee, acting in good faith, simply to make a complaint. Then the whole machinery comes into play and you end up with a deliberation.

Mr. Polsinelli: I accept that the review officer would have access to the information to make that determination, but the section would only be triggered once an appeal of the order is lodged. Assuming that the review officer cannot mediate a settlement between the employer and employee, an appeal is lodged to the order and it is heard before the pay equity commission, in which case the review officer is no longer a participant. At that point, the onus must fall on either the employer or employee to prove the position.

I submit that if we delete that line, in effect what we are doing is saying, rather than the onus falling on the employer to prove that he has a valid difference in wage levels, that onus would then fall on the employee, who would have recourse to very little information to prove that or would have recourse to less information than the employer would have.

Mr. Weldon: I can only say that, looking at this on its face, there is clearly what is commonly referred to as a reverse onus provision. The Supreme Court has said in many cases recently--

Mr. Polsinelli: But a reverse onus provision--

Mr. Chairman: Mr. Polsinelli, I have to interfere for a moment. Could we try to avoid debate and keep it to questions? I have a long list of questioners. The way you are responding to Mr. Weldon does appear to be getting into debate rather than questions.

Mr. Polsinelli: I appreciate that, Mr. Chairman. I will try to narrow the focus of my questions.

Mr. Chairman: Try to restrain yourself; I know how difficult it is. Mr. Weldon was on the subject of the reverse onus aspect of the bill as he perceives it. I would like him to carry on from there, if he would.

Mr. Weldon: I was just going to say that the Supreme Court has said a number of times since the Charter of Rights came into effect that reverse onus provisions in legislation are objectionable, and there has been a succession of decisions of the Supreme Court striking them down and the federal government has gone through a number of its pieces of legislation and removed that type of provision.

Mr. Polsinelli: Exactly. Were those decisions not dealing with criminal law, though?

Mr. Weldon: Dealing with a number of cases. I do not have with me a catalogue of all the decisions, but I am aware that that has occurred.

Mr. Polsinelli: I guess we do not want to become argumentative. I do not want to carry on this debate, because a number of other members would like to ask questions. I will ask one more, then I will leave the floor.

In terms of sexual inequality, does the charter not provide an exemption for affirmative action programs? The intent of this legislation is that it leads to affirmative action.

Mr. Weldon: That may be so. The point we are making, if you read the bill, is that if it were passed in its present form and were challenged on the basis that it provided remedies for one sex but no provision for remedies for the other sex and therefore discriminated on the basis of sex, the Supreme Court might very well say, "That is right, and you are going to have to amend the legislation because it is bad in its present form."

Mr. Polsinelli: That is not the question I asked you to address, sir. You are talking about section 15, the equality provision of the charter.

Mr. Weldon: I am talking about the whole bill.

Mr. Polsinelli: You are saying it would be attacked under section 15. I would like you to address the point that the charter does provide an exemption for affirmative action programs, and the preamble to this bill clearly sets out that it is an affirmative action bill. How would you respond to that?

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Mr. Weldon: With great respect, my only response is this: If our comments are wrong, and the bill is passed in its present form, nothing has been lost except the time the members of the committee have spent listening to me. However, if we are right, then you have lost some legislation.

Mr. Polsinelli: Sir, do not misunderstand me. I am not implying your comments are wrong; I am just trying to understand them better.

Mr. Weldon: I think we have expressed our views. Anything I could do would simply be repetitious of what I have said.

Mr. Chairman: I believe Ms. Caplan has a supplementary to your question.

Ms. Caplan: My only supplementary is really a point of clarification. You made the point that you feel that only one sex would be entitled to remedy under the act. In fact, because of the provision of 60 per cent being the determination for a female-dominated category, any men, i.e., the other 40 per cent working in that female-dominated class, would also be entitled to remedy. I wanted to make sure you were aware that remedy is available to everyone working in a class which was identified as being female-predominant. Men would also be entitled to remedy under that provision.

Mr. Weldon: Yes, I said that, but the remedy would only be available to a man if he could bring himself within a female class as defined.

Ms. Caplan: If he is already in that.

Mr. Weldon: Suppose, for example, that in a small establishment there were 25 employees, 24 of whom were women. There would be no male class. They might all be doing the same work.

This might sound outrageous, but suppose, for example, that in a small garment factory an employer had a room full of sewing machines and a bunch of



women working at the sewing machines and a man was hired. The employer may say: "I have 24 women here, and as far as I am concerned, I have never met a man yet who could operate a sewing machine the way a woman can. I am going to pay these women this way, and I am going to pay you less." The man could not claim he was a member of a female class as defined. What would be his remedy if he said, "I am being discriminated against"? There is none.

Ms. Caplan: If that were happening, there is a remedy, and that is equal pay for substantially equal work legislation, which is already in place.

Mr. Weldon: There is no remedy under this legislation.

Ms. Caplan: There is remedy under other legislation which is already in place, and that could not happen now as it exists.

Mr. Weldon: Then, on the face of it, this bill by itself is discriminatory.

Ms. Caplan: I just wanted to make the point that this bill would not supersede any of the legislation which is already in place to take care of the situation you have brought forward.

Mr. Weldon: No, but if this bill were challenged and the Supreme Court were asked to give a decision on what this bill said, our submission to you is simply that the Supreme Court might very well say this bill creates benefits on the basis of sex and makes no provision for benefits, or if you want to put it negatively, denies the right to benefits to the other sex. Therefore, it is invalid. We are making this submission in good faith.

Ms. Caplan: I understand your submission. Thank you very much. I appreciate that.

Mr. Ferraro: I would like to ask Mr. Weldon a question on his criticism of the power of the commission, which I personally think has some merit. Notwithstanding the fact that the pay equity commission is appointed by the Lieutenant Governor, it is also vested with the power of hiring review officers, hence the affiliation.

First, I was concerned about creating another level, if I may use the jargon of some people who criticized the bill. You do not want any more bureaucracy, so to create another level of whatever so that you can make an appeal from the commission would just complicate that matter. Bearing in mind the composition of the commission with the mix of labour and management or employer and employee, can you see the remedy to this problem by simply having some other entity in the government or in the ministry hire the officers? Is it that simple?

Mr. Weldon: Yes. It occurs to me that if you are going to talk about the affirmative action part of work contemplated by the legislation, and if you are going to talk about appointing review officers and that sort of stuff, one solution to the objection is to have all those people as members of some department of government; for example, the Ministry of Labour. Then you can set up a commission which will be totally independent and not have any jurisdiction over affirmative action, public education, setting standards and all that sort of thing. It will exist solely as an independent commission to hear appeals from orders of the minister.

Mr. Ferraro: I think you are absolutely right.



Ms. Gigantes: I am not going to comment on that last proposal, because it terrifies me.

We have not had a decision from the Supreme Court of Canada that addresses the question of whether equality means that all people shall be treated the same or that certain people can be treated in different ways under the law because they are different to start with and are going to need different treatment to achieve equality. We have not had a judgement that makes a distinction.

Mr. Weldon: Yes. I will not presume to speculate on what the Supreme Court will do in any particular case. We are simply concerned as a group with legislation within the framework of the Charter of Rights. We see some difficulties. We say that if this legislation is worth passing in a form that is not going to create a large--

Ms. Gigantes: I am in complete agreement with you on the question of whether there should be remedies available to men under this legislation apart from their incumbency in a female-predominated work group. We will be bringing forward amendments of that nature as we did to the previous bill, Bill 105.

When it gets to the question of how the Supreme Court may judge this bill, I am absolutely confident in saying to you this will be challenged. All kinds of groups out there are anxious to challenge it and will be challenging it. It does not matter how we write it. It is going to end up being challenged.

Mr. Weldon: As an example, if this legislation were passed without amendment and some test challenges were made based on the kind of thing we have identified, you could very well have the situation that has happened a number of times. A prosecution or an order has been made, a challenge has been made and, the minute the challenge has started, the whole system has ground to a halt. Nothing is done.

Ms. Gigantes: There is nothing we can do about that.

Mr. Weldon: That is right. At the end of two years, you may find you have a bad piece of legislation and have to start all over again. Then the people you were responding to in passing the legislation will be mad at you.

Ms. Gigantes: Yes. I think that in legislation of this nature there will be a challenge on several grounds, no matter how we write it. I think I can assure you of that. If you are looking for the perfect solution in the writing of legislation of this kind, so that it will never have a court challenge, you can feel guaranteed that will not be the truth.

Mr. Weldon: It is a matter of degree.

Ms. Gigantes: No. It is not a matter of degree in terms of the hampering of the effectiveness of the legislation. It does not matter whether the challenge is upheld in the end or not; the same kinds of problems can arise.

Mr. Weldon: I say most respectfully that I really do not think it is in the public interest or your interest to pass legislation which, on its face, is so vulnerable to attack. Lots of legislation gets attacked because the Legislature has unknowingly created some difficulty, but I believe a number of people have come before you in these hearings and have identified the same things we have talked about. Surely, on their face, these difficulties have some--

Ms. Gigantes: I suggest to you that whenever we undertake legislation which is an attempt to redress discrimination on a society-wide basis, the likelihood of its being challenged is extremely high.

Mr. Weldon: I sympathize with the predicament of the Legislature. As your chairman knows, I have not been a member of the Legislature, but I have held public elected office myself. I am aware the only kind of taxpayer is the indignant taxpayer; there is no other kind. I am aware of that and appreciate the difficulties the committee finds itself in, and I have made these comments in good faith.

1510

Ms. Gigantes: I take you to your recommendation on subsection 7(1). If we took your recommendation, subsection 7(1) would read, "This act does not apply so as to prevent differences in compensation between a female job class and a male job class"--and then what--"if there is"?

Mr. Weldon: Just take out the words.

Ms. Gigantes: And who is to demonstrate if there is?

Mr. Weldon: Whether the conditions exist that would qualify an employer and whether a certain condition exists in a work place are matters of fact. The connotation here is that when you superimpose on that the right of a review officer to make a personal judgement on whether those conditions exist, then if the employer is unhappy, he is appealing against a decision and he has no way of forcing the review officer to take the stand and be questioned about why he or she made the order that was made. That is the only point we are making.

You do not make a substantial diminution of the effect of the subsection by taking out those words. All you have done is to take out the reverse onus.

Ms. Gigantes: I do not think we will change the subsection at all if we take out those words, because the employer is still going to have to indicate why he feels one or all of these clauses 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d) or 7(1)(e) apply in his work place.

Mr. Weldon: That may be the practical effect.

Ms. Gigantes: It seems to me whether you call that reverse onus is a matter of opinion. In any case, the employer will be involved in putting forward facts about his work situation in terms of pay, positions and so on. Presumably, you want the employer to have a role in a hearing and if he has, whether you say he has to demonstrate this or whether you say he has the opportunity to demonstrate it, he has to be there.

Mr. Weldon: This may be a bad comparison, but it is one thing if the Highway Traffic Act says you are guilty of an offence if you have so many parts per whatever of alcohol in your bloodstream. If the Highway Traffic Act says you are guilty of the offence if the opinion of a police officer is that you have that many, that is the distinction. In that case, you would be prosecuted on the basis of whether the police officer thought you had it or whether you did have it.

In one case, you are talking about an opinion, and in the other case, you are talking about a fact. If you take out the words, you do not change the



facts on which the decision is made. You simply have eliminated the difficulty of having a process invoked on the basis of somebody's opinion.

Ms. Gigantes: It seems to me I end up in court anyhow, having proved that the reading was under a certain amount. If you want to call that reverse onus, go ahead, but we practise reverse onus in that sense all the time in terms of our legislation.

Mr. Weldon: Yes. I was called to the bar in 1951 and I practised until last year when I became fully retired. During my law practice, I was as familiar as any other lawyer with dozens of statutes that had reverse onus provisions in them. We lived with them all the years, saying: "Oh, well, the Legislature is supreme. It can do whatever it wants." But since the Charter of Rights came along, the Supreme Court has said a number of times lately, "You cannot do that." All the rules have changed.

Ms. Gigantes: You cannot generalize those decisions. Those are very specific cases. I suggest to you that in terms of labour legislation, this is a very regular kind of approach. If one is going to challenge it, one, in essence, challenges the right of government to legislate within the work place.

Mr. Weldon: All I can say is what I said before. If we are wrong, you have lost nothing. If we are right, you have lost some legislation.

Ms. Gigantes: If you are wrong and we try to change the bill and get away from this legislation, we may end up with nothing that is enforceable.

Mr. Chairman: With apology, I am going to have to cut it off at this point. I remind all the members that we should, if possible, avoid debate and keep it to the line of questioning so we can give the representatives who come before us an opportunity to respond in a proper fashion.

Mr. Weldon, I thank you for your time. It is good to see you again. We are colleagues from some years ago, and it is always a pleasure to see you.

I have been asked to provide a five-minute break at this time, which I will do. We will have the next delegation before us at 3:20 p.m. I believe the Peat, Marwick representatives are here, so we will just be five minutes and then be back.

The committee recessed at 3:15 p.m.

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Mr. Chairman: The next delegation is represented by John Rives, the director of compensation for Peat, Marwick and Partners. The brief is number 39 in your package. I apologize for starting a little late, but we would appreciate your proceeding now with your presentation.

PEAT, MARWICK AND PARTNERS

Mr. Rives: Thank you, Mr. Chairman.

Members of the committee, in the interest of time and because I know you can read this presentation, with your permission what I would like to do is to skip through some parts that you can read later and hit the parts that I think really warrant and should have some emphasis at this hearing.



Really, in a sense, the first page is a sort of boilerplate that says Peat, Marwick is a good consulting firm and knows what it is talking about. We can pass that by. As a matter of fact--seeing Susan Fish here--I happen to be the person who was responsible for putting in the job evaluation programs at the city of Toronto; what, about 10 or 12 years ago?

Ms. Fish: That anyway.

Mr. Rives: I am sure she can vouch for the abilities we have. Let us go on. In turning the page I discover that the word processor failed to put page numbers on so Murphy's law is still in effect.

I would like to start at the top of the second page though. I wrote to some members of this group about Bill 105 and expressed some concern about some of the items in Bill 105. We believe that this bill is a great improvement over Bill 105, which is now also in the House. It is our view that the individuals who drafted this particular legislation, Bill 154, deserve a note of commendation.

It is obvious that they have attempted to avoid the problems that have been encountered by others. None the less, there are some points we believe still merit consideration.

I would like to start just by making one quote because it sets the tenor for everything else I want to say: "The purpose of this act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes."

If we jump down to the next to last paragraph on that page, it sums up my thinking.

"The success of this act will be measured by how well it achieves that single objective, without destroying the fabric of the wage structures that have been woven over the years by the impact of labour markets, the ups and downs of business cycles, hundreds of thousands of individual judgements and the tremendous influence of collective bargaining." We are trying to build something up; we are not trying to tear something down.

The next page mostly goes into a couple of minor points--not so minor. I think they are important points, but points that you could read about and that do not need elaboration.

1530

I want to start back at the bottom of the third page, talking about establishment. The crucial point is, "What kinds of plans must an organization prepare? What comparisons must it make?" I think this very fact of uncertainty that is created in people's minds has led to an awful lot of fear, particularly on the part of smaller organizations, because they are not at all sure what they are getting into and they are very afraid of it.

Section 11 refers to a--and I stress the word "a"--gender-neutral comparison system. Then section 12 mentions pay equity plans, in the plural. Subsection 13(1) states, "there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit." Right at the beginning, we wind up with a certain amount of confusion. Just how many plans do I have and how am I going to compare jobs in these? Am I comparing unit to unit, individual to individual or job to job? The confusion starts there.

Most important, the definition of establishment and the way plans are to be prepared and applied will dictate how the comparisons will have to be made. This will be the main determinant in how successful the plans are, from the viewpoint of both the employees and the organizations.

As a general principle, job evaluation plans--and that is actually what we are talking about here, some form of job evaluation plan, whether it is applied job to job or over an entire group--should be developed and applied to reasonably homogeneous groups. This has been reflected in the common practice of having separate plans for the factory employees, the clerical and technical employees and the supervisors and managers.

There is no suggestion of gender bias in that. Rather, it is a recognition of the differences in the work. The job characteristics that are important and of greatest value in one group are completely different from those that are important in another group. This was proved in a study conducted last year and reported in the magazine *Municipal World*. I have attached a copy of it to the back, and you can read it at your leisure later.

That study compared the impact of using a manual developed for a heavy industry with one developed for a municipality. I will leave you to guess what municipality it was. The study found that attempts to use the manuals in organizations other than where they were developed upset established relationships that had nothing to do with bias. If I try using a municipal manual in a heavy industry, I do not get an appropriate relationship. It upsets relationships that have nothing to do with anything in the way of bias, whether it is a gender bias or any other kind of bias. Long-established relationships are upset.

Ms. Gigantes: That was with one employer?

Mr. Rives: That was taking a manual designed specifically for a municipality and putting it into a heavy industry. One employer, a rather large one, a large heavy industry. I also have done evaluations--

Ms. Gigantes: You had two employers there.

Mr. Rives: Yes. You have a municipality that is an employer and you have heavy industry, which is another one. I was trying to see what happens if you move manuals from one organization to another. Maybe the idea was, can you have a universal, canned manual that you can move easily from organization to organization? In the study, we had a heavy industry and we had a municipality; we had jobs out of one of the provinces and we had jobs out of one of the universities. We tried using manuals that had been developed for each of these. We also tried some canned manuals to see the impact.

The end net result was that the characteristics of the work being done and the value of that work to the particular organization are so vastly different from one organization to another that the likelihood of having a single canned manual that would be universally applicable is almost nil. What I am saying is that you cannot suddenly go in and say, "A manual that is good for this group is going to be good for that group." It will not necessarily work that way.

As a matter of fact, back to another point, in the city of Toronto, we initially started out with the idea that we would try to have a single manual among all units there. In fact, when we started trying to do this, we were running into so many problems that we finally had to decide, "No, we are going



to have to back off and set up separate manuals for each of the groups," so we wound up with a job evaluation manual for the outside workers, a job evaluation manual for the inside workers, another for the supervisors and still another for the senior management.

There is still no gender bias in any of that, because in our own checks made at the time, the jobs were essentially equivalent except for some outstanding cases where it was obvious there had been gender bias, such as with the cleaning ladies. This was well reported by the city when it made its presentation on the green paper. My point is that because they have more than one manual, these manuals are not identical and they have separate wage scales does not mean they have discrimination. It does not mean there is any real, viable difference between them. I will come back to that in a minute.

As a matter of fact, I will come back to that right now on the next page. I said people were afraid of trying to make these comparisons and were not sure what to do. In spite of all the problems you can have with job evaluation, and in spite of all the things I have mentioned about not being able to use canned manuals, still, should an organization desire, the best way of achieving true equity is not by job-to-job comparisons, but through an overall evaluation program to correct all inequities, whether they are caused by gender discrimination or any other kind of bias or discrimination.

Certainly, there is no mystery in the city program. There is nothing hidden. We found lots of inequities that had nothing to do with whether the person was male or female. It had to do with whether a particular manager, boss or commissioner liked the person or not. Their work history had something to do with it. There were a lot of reasons for pay inequities. We said, "We want to correct all inequities, male inequities, female inequities or what have you."

The way to do it then is by an overall evaluation program. There you would have one or more job evaluation plans developed and applied to all the jobs. A wage scale is established, usually high enough to minimize red circles, and then the underpaid jobs are brought up to this new scale. In effect, equity is being established by comparison to a trend line rather than to specific jobs.

That is a critically important point which can make a lot of difference in some cases, because you can have two jobs in a particular job class one of which is grossly underpaid and the other of which happens to be grossly overpaid. If those were the only two jobs in that job class, and you strictly followed the wording in the act, you would have to bring up the low one to the high one, and then you would have two jobs that were overpaid. You would have created more inequities in the system rather than try to eliminate inequities.

Had you gone through and done an overall evaluation to establish a trend line in there and said: "Fine, here is the general wage structure we have in this organization. Now, let us correct all the inequities in it and bring all the low ones up to the line," you would have eliminated your inequities without creating more inequities, which is, in essence, what we are trying to plead.

If you look at exhibit 2 in the back of the brief I have given you, perhaps I can illustrate this. I forgot to ask for an overhead projector. I just assumed one would be here. If I measured the value of a group of jobs in a bargaining unit and plotted the value in points against the pay in dollars, I might come up with some points like those circles you see there. This is fairly typical.



By the way, this is not a specific company; this is a representative example. This would be pretty typical for a labour, maintenance and trades type of illustration. There are enough points on there to get the point. If you look at the first three points coming from the left, depending on which of the two, the first or the third, you compare it to, the second is or is not an inequity. It depends entirely on where we happen to decide to compare it.

If you turn the page and look at the clerical and technical group, again you have a fairly typical illustration of what you might see. If I take a look at the third point, again I have the situation of saying, "Which one am I going to compare it to?" As a matter of fact, you could jump up to the fourth and fifth and say, "Which jobs am I comparing to?" It creates a problems of saying, "What is a job class?" If we interpret job class very narrowly, we get a different situation than if we interpret job class very widely. You will wind up with results that are markedly different, not because you are correcting inequities but because somebody decided to interpret the act that way.

1540

If you turn the page, you will see the trend line for the points that you just looked at. There is the dotted line for labour, maintenance and trades. Certainly, down at the bottom, the labour, maintenance and trades appear to be paid more than the clerical and technical. This could be interpreted as general bias because most of the clericals down in that region are female and most of the labour and maintenance people are male. In fact, the average maintenance job is getting only \$30,000 and the average clerical and technical employee is making \$32,500. The lines cross because this is a bargaining strategy that was adopted by the different bargaining units.

The labour and trades people were great egalitarians. They said everybody ought to be paid the same and their negotiating strategy for ever and a day was to get a fixed dollar increase; give everybody \$100, give everybody \$1,000. The clerical people took a different viewpoint and said, "When we have our negotiations, we want a percentage increase."

Obviously, over a time, this is going to make a difference, but even if you accept that and say, "I do not care, I still think there is discrimination and I want you to bring all those to a common line," then fine, I will put in a single job valuation program, I will put them on a common line and I have exhibit 5.

Now my average labour and maintenance persons are making \$31,500 and--guess what?--they got a raise, obviously because they were brought up to a line. My average clerical and technical persons are now making \$34,000. They got a big raise because we had to adopt a common line. That line did not correct any inequities; it just brought everybody to a predetermined scale.

What happens with next year's negotiations, the next year after that and the next year after that? If we assume the same pattern of fixed increases for one and percentage increases for the other and turn the page to exhibit 6, we have four negotiations later. Guess what? We are right back to where we started.

This is the kind of thing that can bother some people. Are we really looking at gender discrimination and do we not have to give more credence to the fact that, when you start making comparisons across bargaining unit lines, you are going to run into some severe problems?

In some cases, it can be done, if the work is close enough. I did some work for the Saskatchewan hospital association about 10 years ago. We could not bring everybody to a common line. There had been a committee set up by the provincial government to investigate the thing. They set up a rather large task force, and I was trying to advise them on how to get it to a single manual.

We could not come to a single manual that would be agreeable to everybody because, no matter what we had to do in juggling factor weights and juggling factors and doing everything else, someone wound up grossly unhappy because it was upsetting the patterns there were. This is the only real major concern I have about the legislation.

I am not proposing solutions. I must admit I have talked to people in the department and I am not sure what the solution is. There is a problem that needs to be addressed and examined carefully. If you start crossing bargaining unit lines, you are going to create as many problems as you solve.

The unions will take it--I have nothing against unions; I worked with them for years and I would not even have a job if it were not for unions--because they are going to get more money on that first cut-through, but after four or five years, they are going to be right back in the same box. Then there will be a question coming. We can go back and start talking about equal pay for equal work, a different context, but I might be able to attack four years later on that basis. Who knows? We are altering a situation, and I do not think that is resolving it. I believe that is something that should be considered before you go too far.

I have two final points, the first of which deals with the matter of defining the pay equity criterion, on page 7. Section 4 dictates that the criterion for equity is to be the pay as related to the "value of work" required in the "performance of the work." There are, however, two kinds of jobs, and their determinants for value are different. One is commonly referred to as a position-rated job, and the value is based on the duties assigned and performed from day to day. This is the most common thing you see.

The other is referred to in industry as a craft job, and the value is based on the skills and abilities the individual brings to the job and may be required to perform, not the duties actually being performed during any particular period. The steel industry's co-operative wage study job evaluation plan, which is probably the oldest and most successful plan that has ever been adopted, brings that out very clearly. That is indicated in exhibit 7, which is the last exhibit you have. They point out in article 3.08, "Special problems are presented in the description and classification of trade or craft, assigned maintenance, clerical and technical...jobs."

They realized that trade and craft jobs in particular had to be handled differently. For instance, a lathe operator is paid to operate a lathe and to perform those duties necessary strictly in the operation of the lathe. On the other hand, a machinist, who may be operating a lathe right beside that lathe operator for the vast majority of the time, is paid because he is a machinist, not because he is operating the lathe. Consequently, it would be reasonable and expected that the machinist would be making more money than the lathe operator. It is the nature of the work.

I raise that because there are people other than craftsmen in jobs you are familiar with who have a similar kind of problem; for instance, the uniformed forces, police and firefighters. The sergeant on the desk is not



paid for the clerical duties performed from day to day, but rather for the training and experience a municipality can call on when it needs them. On the other hand, you could have another person who is a clerical person, not a trained police officer, doing essentially identical duties from day to day. However, because of the difference in training and the possibility of what he may be called on to do, he may fully warrant a difference in pay.

Some professions would also require special treatment, for instance, the lawyers in most municipalities. Most lawyers are not paid for the cases they happen to be working on; rather they are paid for the education, training and years of experience they bring to the job. Most of them are paid on a longevity basis. The longer they are on the job, the more they make, assuming they are satisfactory in their performance and keep their jobs at all.

I believe the legislation should make some special allowance for these kinds of jobs, particularly the ones for the uniformed forces, because with uniformed forces, there is the added problem of compulsory arbitration. If compulsory arbitration comes and imposes some kind of solution, that could trigger a problem. Somebody who had nothing to do with it could say: "I am equal to that police officer. He has more; I want more too." You get into a whipsaw which is never-ending.

My second point is the mandatory posting dates. The posting dates you have are possibly adequate for small organizations, but not for the larger organizations that decide they want to get into an overall program. The time is terribly tight. Most programs for a large organization will take more than a year. I suspect you will have quite a number of people coming back and asking for some relief on the deadlines, to give them time to develop appropriate plans and get them all defined. They need to know exactly what they are doing and what the cost is going to be before they can go ahead.

Thank you very much. Are there any questions?

Mr. Baetz: Thank you very much for that brief. It was certainly up to the very high standard we expected. What did you call it, the boilerplate level of your company? It is certainly very thought-provoking and professional.

The comment you made at the bottom of page 2 and the top of page 3, dealing with compensation, has triggered a question in my mind that I might direct to you but maybe more appropriately to the parliamentary assistant.

1550

You have reminded us here that compensation specifies all payments and benefits, not just money. It could mean a union demand across the board, percentage increases, increased benefits, increased perks, shorter hours, more vacation, more time off and so forth. Really, compensation will mean a lot of different things in addition to just more dollars in the paycheck. It is that observation, which I certainly think is a very important one, that has triggered the question in my mind. Maybe I should more appropriately direct it to the parliamentary assistant. If you wish to respond to it, we will then turn it over to him.

The question really is--and I guess it is also with the background of all the delegations that have been here this past week, many of which were for and many of which were opposed to the bill. They were all talking about, "Yes, it will cost money; it will cost more." My question is, how much more? Does anybody have the foggiest notion how much all of this is going to cost in



direct increases or indirect payments over the years? Has any kind of a cost projection ever been made, and if so, what is it? I direct that both to you and to the parliamentary assistant, whoever wants to answer it first. It is a simple question, I know.

Mr. Ward: I am here longer, so you can go first.

Mr. Rives: Mr. Ward has indicated he will let me go first. That is very gracious of him. The only thing you can ever do is to make a comparison based on some experience that you have had. I have been doing job evaluations now for more years than I care to think about. It depends entirely on how much variability you are going to find in the group itself.

When we go into a factory, for instance, and are working on factory-type jobs, because of the nature of the work and the ease with which we can compare jobs, we do not find a great amount of variation. Most of the time we are able to install a full, complete job evaluation program for a cost in the vicinity of 1.5 per cent or two per cent total. It is not terribly expensive.

Clerical jobs are generally more variable. They are harder to compare job to job; it is hard to do the ranking on them. Even with an evaluation plan it is harder to do the evaluations. We find a much greater variability in it. Generally speaking, we think in terms of an evaluation program costing anywhere from 3.5 per cent to five per cent.

When you hit the managerial and the high supervisory ranks, you are getting into even greater variability within the jobs. You have a lot of other factors coming in that are hard to evaluate. Generally, that will run from five per cent to seven per cent, although there is no top limit. I cannot say, because it depends upon how bad a shape they are in.

The projections have been made, and I have read them; I am sure the parliamentary assistant has also. Manitoba, for instance, said that it was going to limit its plan to a cost of one per cent per year for four years. This one per cent, as a matter of fact, is in the legislation here.

The problem I see is that if an organization does try to adhere strictly to the act, do job-to-job comparisons and then raise only the ones where it sees the apparent lows, it is going to discover that what it has done has been to create a lot more inequities. It will have created a lot of dissatisfaction in the firm, and sure enough, the consultants are going to get a lot more work because the organization is still going to have to call us in to try to straighten out the mess it has gotten into.

The unfortunate thing is that the organization will have brought the jobs up to such an extent that now the cost of putting in the scheme will be higher, in actual fact. It is a little difficult to say what it is going to turn out to be. I say higher because what happens is that the trend line moves up; that is number one. If you have gotten into this, where you go from one overpaid job to two overpaid jobs, as I illustrated earlier, then you have compounded the problem.

Even if there were a limit of four per cent on there, by the time the company got through, it would probably find it would have to back up and correct some more. The other thing I have said out in Manitoba is, all right; let us suppose that to correct the inequities, it is going to cost five per cent. The law says you only have to spend four per cent. I want to watch your next negotiations when you have to stop because, on the face of it, you will

have acknowledged there is a remaining inequity of one per cent. I do not see how any organization could avoid going ahead and finishing the job.

I would come back to my original numbers. You are probably looking at 2.5 per cent for the clericals, 3.5 to five per cent--overall, you might get away with around four or five per cent. But it is highly variable.

Mr. Baetz: In that, you would include the indirect costs: labour costs such as a shorter work week or more vacation and so forth? If you add all that in, does it--

Mr. Rives: I wish you had not asked that question. No, I am talking about payroll costs.

Mr. Baetz: So that is another add-on then.

Mr. Rives: Now you get to look and see: "How many benefits do we have? Oh, we have 25 per cent benefits." So now I am up to six per cent.

Mr. Baetz: I see. Maybe with that very professional opinion--

Mr. Ward: Now you want an unprofessional one.

Mr. Baetz: I would like to have somebody to aggregate all this, from a public point of view. What is it going to cost in this province? Any idea?

Mr. Ward: I do not think I can provide you with that information. Compensation is taken to be salaries, benefits, perks--the total package. In terms of coming up with a fixed cost, I do not think we would have that information available. What is established, though, is the cost per corporation being fixed at the one per cent of that total. After that, it becomes a factor of longevity rather than direct, single figures.

Mr. Rives: May I make one additional response to that? By the way, I am not implying you should not do it because it costs money. I adopted the philosophy many years ago that you should be rating a job, not an individual. I stake my whole professional opinion on evaluating the position, not the person. Consequently, if it requires that to correct inequities, then I think it ought to be done.

I believe firmly in pay equity programs. The ones that are high-cost are the ones that have had the worst inequities, and I cannot really feel terribly sorry for them. The ones who have done a conscientious job of trying to administer the programs well are the ones I am more concerned with. There you could probably find the cost will run lower, because they have not allowed the extreme inequities to get in.

Mr. Baetz: I gather that what we are asked to do here, in the name of justice, is to take one tremendous leap of faith.

Mr. Ward: I do not know whether that is entirely fair, Mr. Baetz. The fact of the matter is, you have to establish what the inequities are out there, which is part and parcel of the legislation. Really, you are asking for a specific number that I suspect would be all over the map, depending on who was doing the estimates and what their methodology was. I just do not think there is a fixed number.

Mr. Baetz: I was not even asking for a specific now. I was leaving



it at asking for a reasonably accurate ball-park figure.

Mr. Ward: I do not think we can help you.

Mr. Stevenson: Do I interpret, then, what you are saying here, that you have no comprehensive studies by consultants, either through the private sector or from universities, to examine the cost of these programs?

Mr. Ward: I do not believe there is anything definitive out there, nor could there be. You have to define the extent of the inequities. The reason for the limitation that is built in there, in fact, is so that at least the annual maximum fixed cost for a corporation is identified, but in terms of saying, "What is the total value of pay equity adjustments over however many years it takes to make those adjustments," I just do not think you could ever establish it.

Mr. Stevenson: I suspect you may not be able to establish an exact figure, but surely some of the experiences of the people like our current--

Mr. Ward: Okay; Minnesota, for what it is worth--

Mr. Stevenson: --person in front of us from Peat Marwick, and many others in the field, could give some statements that would give us a ball-park figure and tell us, at least in certain sectors, what it may cost.

Mr. Ward: Minnesota's experience, I am told by Dr. Todres, was 3.7 per cent of total payroll.

Mr. Stevenson: I am not sure what that tells us, though.

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Ms. Caplan: There is no estimate in Minnesota, which has brought in a pay equity plan. They had estimated that it was likely going to be four per cent, one per cent a year over four years. In fact, it was less than that because of the job evaluation system. Picking up on the point, I think it is fair to say that in a firm that has a formal job evaluation scheme where there is non-gender-bias--there are many, and this gentleman has been doing it for 15 years--there could be no cost in that firm. Do you say that is fair?

Mr. Rives: Yes. It comes back to the numbers I started out with originally. If I take two per cent from the factory people, 3.5 per cent to five per cent from my office people and maybe seven per cent from my supervisors, take the groups, lump them together and average them, I am going to come out somewhere in the middle. The four per cent is not a bad number. But a firm that has a well-administered, non-gender-bias system in effect now can probably walk in and say, "We comply," and there should not be any real argument.

I am sure the city of Toronto is going to stick up a thumbtack, hang up a banner up and say, "We already did it, folks," and it will not cost it anything. They put out their money. But whenever you go in the first time to correct one, it is going to cost. How tolerable that cost is depends on how badly off you were to start.

Ms. Caplan: The question really is--and this is what is difficult to quantify--how many of the businesses and municipalities and how much of the broader public sector have job evaluation schemes in place today which would



comply with the act. That is almost impossible to do until you take a look at it. But we do know from the experience in Minnesota and Manitoba that it is likely, because of the experience and practice of others and the information we have heard today, that four per cent is a reasonable expectation for those firms which are not presently complying and do not have job evaluation schemes.

Mr. Stevenson: All those words boil down to the fact that the government has no information. I will pass this up and, when it is my turn to get on with a question, other than a supplementary, I will continue.

Ms. Caplan: I do not think that is what we said at all.

Mr. Chairman: We do have a bit of a time problem. I know this is an interesting discussion, and we appreciate the background and the kind of information you can provide to us, but I ask the questioners again to restrain themselves a little. We have another delegation coming before us. Try to keep to questions.

Ms. Gigantes: I thank you for your presentation. I will take time and go back over it because there are parts of it I still have difficulty with. I will ask you about a couple of those parts.

Does it surprise you that under the legislation as it is now proposed, with a cutoff point for application of under 10 employees, that 84 per cent of the firms in the private sector will not be affected by this legislation?

Mr. Rives: No. For instance, in the printing industry, the average printing firm has only about 10 to 12 employees. There are something like 2,500 printing firms in this country. The essence of small business is that it is quite small, because when you define it in those terms, you are bringing in every mom-and-pop shop and, the individual entrepreneur who licensed himself, incorporated a small company and is working solo, so I am not at all surprised. The vast majority of companies in this country have only around 10 to 15 employees or fewer. Mind you, most of the companies are down there, but most of the employees are working for the big firms.

Ms. Gigantes: Those big firms already have job evaluation schemes or one kind or another in most cases.

Mr. Rives: Schemes I might go with.

Ms. Gigantes: Yes. Plans no?

Mr. Rives: Beyond that, I will reserve judgement, because some of the plans would not stand up under gender bias any way you cut it.

Ms. Gigantes: Okay. Can I ask you about your concern on comparing across bargaining groups? I think this is critical to some of our concerns here.

In the city of Ottawa, there is a Canadian Union of Public Employees local that covers inside and outside workers. When you looked at the city of Toronto way back in ancient times, you came to the conclusion that you had to have separate plans for inside and outside workers.

Mr. Rives: It depends on specific circumstances. It may work in one case and it may not in another. I just got a telephone call a while ago and it looks like I will be chosen to put in a plan for Queen's University. We are

going to try to cover everybody in the university in one plan, except the academics. I am willing to try. We may make it, but we may not be able to.

So my point was not that it is impossible, but rather that it is very difficult because it is going to upset established relationships. If the people involved are not willing to accept this, then you are going to have extreme problems trying to get it in. Any job evaluation program is going to upset people. I do not care how good you are. You are going to have complaints.

As a matter of fact, you could say that 85 per cent of the people are going to get a raise out of this program. Most of them do. Eighty-five per cent of the employees get some kind of a raise. Then about half of them complain because they did not get as much as they thought they should have had. So you are winding up with a process that is inherently laden with problems and complaints. The more we pile on it, the more likely it is that we will not be able to succeed. For the city it was preferable, and there was no reason that we could see why we should not.

Ms. Gigantes: Was there one local that covered inside and outside workers?

Mr. Rives: No. There were two locals.

Ms. Gigantes: Yes. Some of the comparisons that we have heard, certainly during the whole, long months of discussion that we have had around this issue in Ontario, have been comparisons where, in fact, inside workers wanted to be compared with outside workers and with examples that seemed inherently commonsensical. What you are telling me is that, essentially, there is a political problem at the work place level in doing that, quite apart from whether it is one local or inside one collective agreement or one bargaining unit.

Mr. Rives: Maybe I was not clear. What I said was that I do not like trying to force them into a single mode, on a single manual, on a single wage scale. I put in all the plans for Algoma Steel Corp. about 25 years ago. There, we had the steelworkers' co-operative wage study manual for the production maintenance workers. They had a completely separate manual for the clerical workers. We had a union for both, two locals. We used the two different manuals.

One of the things that we were very careful about was to make sure that we had equity between them. In fact, we were not worried about the clerical workers not getting enough; we were more worried that the clerical workers would try to lope ahead of the production workers. We felt that if we allowed the situation to get out of hand, we would be running into an intolerable situation before we got through.

Consequently, we sat down and did some cross-evaluations between the two manuals to say, "How close together are these wage scales?" We found that they were so reasonably close together that nobody could possibly raise a point about it. We said, "That is the way it is going to stay." We had a mathematical relationship which, I suspect, exists to this day. You bargain with the big union first and when you get through, that is what the little union is going to get, because it will not take any less and you cannot afford to give it any more.

My point was that trying to force them into a single manual creates a



lot of problems. That does not mean that you cannot have equity between them, and you may have to do some other checking. But I would also want to make sure that it was really gender bias, if there was any, that created differences, and not the local union's option as to how it wanted to take its money.

Ms. Gigantes: But, in fact, when you give your example here at the back which is so compelling, it has been my experience that women, in whatever local or nonlocal, would much prefer to have an absolute amount given in the amount of wage increase, and it is the men who always ask for the percentage increases. In the CUPE local, the person who benefits is the man.

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Mr. Rives: It depends on the union you are working with, I assume, because I have not necessarily found that. I do know is that no two groups are alike. This is why you can get in the same company where you have four or five different locals--let us have fun. Take the province of Ontario. I think you have something like 16 locals in here, and no two of them want the identical thing every year.

You have a matter of bargaining preference that is going to be a problem if you try to say, just because one is more than the other on a specific job-to-job comparison, that, on the face of it, proves discrimination. I do not think it does. You can compare group to group, but I would want to be sure that what I was correcting was discrimination. I am not saying it was not, but I am saying I can look at this and not be sure that the difference is, on the face of it, caused by discrimination.

Ms. Gigantes: If it is--

Mr. Rives: If it is, then fine, let us correct it.

Mr. Chairman: I am going to have to cut you off very shortly, Ms. Gigantes. I have allowed you a fair amount of leeway.

Ms. Gigantes: I have one other question I want to ask.

Mr. Chairman: A brief question.

Mr. Rives: I would be more than happy to come back, or I will talk to any of you privately, if you want.

Mr. Chairman: Go ahead.

Ms. Gigantes: You cited to us your concerns about section 4, on page 7 of your brief. You quoted from that section which says that "the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed."

I have had some concerns about that too, but they have been the exact opposite of the concerns you raise. It seems to me very often that we take into account the fact that while firemen, for instance, may normally sit around and play cards in the fire station, when they are doing their job, they are doing something that is highly dangerous and highly specialized. For the person working in an office who, when the boss is away, runs the office and may have to make very important business decisions for the office, that would not be counted as part of normal working conditions or normal performance requirements. I worry about the word "normally" because of that.



Mr. Rives: I had worried about that word also, perhaps not quite as much as the other thing, because, being a management consultant, I am using the situation where we can fall back on the fact that management assigns duties to a worker. If these duties have been assigned and that person is doing those duties, then that is his job.

We do not have a lot of problem in getting a description of a job as to what is the job and what is the job content. Once in a while, somebody comes in and says: "Ah yes, but once a month I have to go out and do this other chore. For 20 days I do this and for one day I do that." Generally, what you discover, and again this is a way out for the corporations, is that they say, "Fine, on that one day I will pay you for doing that job instead of your regular job." We have ways and means of covering that, so the "normally" is not a big problem in most cases.

But sitting down and trying to figure out--a lot of people are going to read this, and the first thing they are going to see is the word "payment" somewhere. They are going to say, "Gee, it's just the dollars I'm paying." Then we have all these other things they have not thought about and that may or may not be included in the act. That was really part of the problem I am concerned with.

What I am relating to in the terms "performance of the work" and "value of the work" is the money side of it and not the other, because you can evaluate jobs. This has been well proved. Of course, I can have good evaluation plans and I can have bad ones. A bad plan is one I grab off the shelf and I say, "Here, try on this pair of shoes, and if they don't fit, we'll chop your toes off and that will take care of it." I think all shoes ought to be custom designed, because it is important. But I do not have that much trouble with "normally."

Ms. Gigantes: I guess I have not understood your problem then with this section.

Mr. Chairman: I have to move to Ms. Fish.

Ms. Fish: Thank you very much for coming in, Mr. Rives, and thanks to Peat, Marwick. Thank you also for the plugs for the city of Toronto. I am sure some of those in the audience from the city will be equally pleased to have a bit of a plug as a reminder to show that, at least in some large municipalities, these things are not impossible.

For starters, I want to touch briefly on manuals. You were dealing with that in part in your reply to Ms. Gigantes just a moment ago. You expressed concern about single, universal manuals. In the spirit of the legislation that is designed to deal with firms of a number of sizes, municipalities of a number of sizes and that sort of thing, is it your view that it is possible none the less to develop how-tos or manuals that might, for example, be appropriate to smaller municipalities as a group or some smaller firms in roughly similar forms of business, that would guide and assist so there is a starting point for each group as it tries to enter job evaluation?

Mr. Rives: I would say yes, this could be. If you go back in history a bit, to the 1940s, many of the steel industries tried, independently, to develop evaluation manuals for themselves, and they had a lot of problems with that. It was only after the 12 major steel companies banded together and said, "Hey, let's do one manual for the whole industry, negotiate it with the union, get full agreement on it and we can go ahead" that they proved this could be done. It is not a cheap exercise.

You could start with the manual set up for the city of Toronto and probably, with a bit of testing, adapt that or see whether it would be applicable to a lot of municipalities. I think it would be, but it would take some time, effort and money to do it. It would probably be money well spent, as a matter of fact.

Ms. Fish: Can I ask you about the job class? You expressed a concern about using narrow definitions versus wide definitions. I take it you would prefer a wide definition on job class?

Mr. Rives: Not necessarily. I have a philosophy that I like to see jobs paid properly. I do not like to see them high and I do not like to see them low.

If you make the job class too wide, you can actually hide some gross inequities, particularly with the legislation, because if I make it go out just far enough, sooner or later, I will find the male job that is low enough that I can catch it. Broadening that out will increase your likelihood of catching a low-paid, male-dominated job. I do not think using that as an artificial means of getting around it is an appropriate action.

Ms. Fish: Is it your sense that the parameter of the job class, narrow, wide or otherwise, to be examined is something that, in a unionized place of employment, can be dealt with in negotiations with the union, or do you see that as something that requires a bit more guidance with predetermination through the legislation?

Mr. Rives: In a union setting, you should be able to handle it without too much trouble. If you start trying to get them too broad, you will get some problems coming in from other directions, because management, likewise, has much to gain by having the employees paid properly; not only being paid properly but also believing they are paid properly.

The original job evaluation programs were not started by governments. They were not started by unions. They were started by management to solve management problems. The steel industry program was not the idea of the steelworkers. The steelworkers fought it for about five years, and it was forced down their throats through, actually, a war labour board that froze their wages and said, "Your wages are frozen until you agree."

It was a management action to correct management problems, and most of the programs I put in to this day are still programs that are trying to solve management problems. I must admit that I am a little bit disturbed that management would fight so hard against something that really should wind up benefiting them as much as anybody else, if they are allowed to do it properly.

Ms. Fish: My last question, because I am mindful of the time, would be on the issue of a cross-bargaining unit. The sense I had from your illustrations and elaboration is that the difficulty arises if there is a lack of agreement on the contents of the manual, on the weighting system if you will, across the bargaining units. Am I correct in that, or were there other elements that you felt were difficult?

Mr. Rives: Basically, you are correct in that, because I could almost give you a definition. A good job evaluation manual is one to which management and union agree. If they both agree and all the employees say, "Okay, this will do the job", then whether it is a canned manual, a good manual or a bad manual is immaterial. It is their manual. They have agreed and they like it. If they like it, every person to his own taste.



My problem was that when you go in, yes, you can create some problems among unions, even within a union, if you do not have an appropriate manual and you start trying to cram things together into single measures which would be better measured if you had separate manuals. By the way, that relates more to the type of work being done than to the representation.

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Ms. Fish: That was going to be my next question. I take it your concern is over more than simply a bargaining unit; rather, that there is very different work. I also take it from what you are saying that it is more by way of a caution and that it might be more difficult to achieve agreement between the union and management in negotiating things like the evaluation factors if it is across units than if everyone agrees they should not proceed. In other words, if everyone agrees on the weighting, presumably that is not a problem for you then.

Mr. Rives: No, there is no problem if everybody agrees.

Ms. Fish: You are just saying it might be more difficult to get agreement depending on the unit and depending on the work being done.

Mr. Rives: Particularly in the context that if they do not agree, then suddenly you are going to have an outsider come in and make a decision. I would not want to be that outsider because I have a conscience. I do not think I could hit them all on the head and say, "I do not care what you want; this is what you are going to get." I feel the parties should be able to agree, and the act should be framed so they can reach agreement.

Mr. Chairman: Thank you very much for a most impressive presentation and for answering some very difficult questions. We appreciate your time and expertise in this area.

Mr. Rives: I will reiterate that if anybody would like to have further conversations, give me a call. Our number is in the book.

Mr. Chairman: You are talking at no cost to the people of Ontario.

Mr. Rives: For a limited amount of time.

Mr. Chairman: All right. We appreciate that, and we may take you up on the offer.

I apologize that we are running overtime. The next delegation to come before us is the Canadian Tooling Manufacturers' Association. Brian Taylor is the president. I will ask Mr. Taylor to come forward. In the package of information before you, this is submission 40.

We welcome you and look forward to your presentation. Again, on behalf of the committee, I apologize that we are running as late as we are. We have been trying to get caught up. All members of the committee are co-operating to see that we keep the questions limited. You can proceed as soon as you like.

Mr. Taylor: Thank you, Mr. Chairman. I have served my term as president of the CTMA but right now I am secretary-treasurer, just to get that straight.

Mr. Chairman: I see. You are president of J. A. M. Taylor Tool of Toronto. I misread that.



Mr. Taylor: Yes, I am a member of our association.

Mr. Chairman:-I did not mean to elevate you to the presidency without your having attained that position.

Mr. Taylor: As I say, I served as president for two years, but now I am secretary-treasurer and cannot find anyone to take over that position.

Mr. Chairman: I can well understand that. In whatever capacity, we welcome you.

#### CANADIAN TOOLING MANUFACTURERS' ASSOCIATION

Mr. Taylor: My presentation today takes the form of a letter. It is very brief and to the point. I understand you are running late so I will carry right on. It is addressed to Andy Brandt, MPP, chairman of the standing committee.

"Dear Mr. Brandt:

"The Canadian Tooling Manufacturers' Association appreciates this opportunity to meet with the standing committee on the administration of justice to discuss Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

"The Canadian Tooling Manufacturers' Association is strongly committed to the principles of fairness and equity in employment and compensation practices. For this reason, it cannot support Bill 154 in its present form. Whatever the laudable motives of its sponsors in seeking to eliminate alleged wage discrimination, Bill 154 unnecessarily bureaucratizes personnel and compensation practices. It is a recipe for the imposition of civil service values on the private sector which may often be totally inappropriate to the fair, efficient and workable design of personnel and compensation policies, especially in the smaller companies which make up the majority of CTMA members.

"This submission contains a number of amendments to Bill 154 to which we hope you will give serious consideration. We believe these amendments will add to the credibility and effectiveness of the legislation, improve the use of limited administrative budgets both for employers and government enforcement agencies and reconcile the bill's objectives with those of good people management and fair wage practices.

"The Canadian Tooling Manufacturers' Association is a national association representing about 160 businesses in the design and production of specialized precision metalworking and tooling. About 80 per cent of the CTMA members have between 10 and 100 employees, five per cent have more than 100 employees, mostly in Ontario."

Although I do not have copies, I can leave some exhibits with you people. This book, entitled The Tooling Industry: A List of Manufacturers, was published in 1983-84 by the Ministry of Industry, Trade and Commerce. It includes 225 member companies within our industry. It is being re-published this year, and there is a potential for 700 tooling companies to be listed in the new directory coming out from the ministry, again mostly in Ontario.

"Job descriptions typical of the industry include mould makers, tool and die makers, skilled machinists, fitter-welders, tool designers, and a wide variety of other skilled trades. There is frequently considerable overlap

between skilled trades, with employees in most smaller firms performing a number of functions. Skilled trades have long been performed by both men and women, with women widely represented in jobs requiring high-precision work. There is no gender bias in setting wage rates between the different trades."

As a second exhibit, I have a booklet entitled Tooling and Machining: The Keystone of Modern Industry. It was published several years ago by the International Special Tooling Association, an association comprised at that time of 13 trade associations throughout the world. Canada joined in 1986, and for your benefit, I have added the Canadian flag to the bottom of this submission.

I would like to make one further reference to it. This was made up by the other countries prior to Canada's joining, and on the last page it says, "All of the industry's sophisticated and expensive equipment would be worthless without the highly-skilled men and women"--and I can add that "and women" is in italics--"that make up the work force of toolmakers, machinists and other precision metalworking specialists."

We can carry on to proposed amendments to Bill 154.

"The CTMA believes that Bill 154, in its present form is inconsistent in many ways with the principles of good employment legislation--particularly as applied to the smaller companies which form the vast majority of businesses subject to regulation under this proposed legislation.

"The CTMA recommends that Bill 154 be administered by the employment standards branch of the Ministry of Labour, rather than by the proposed 'pay equity commission' which would combine the functions of advocacy, enforcement and adjudication.

"The proposed 'pay equity commission' would face a fundamental conflict of interest in its responsibility of promoting the interests of employees allegedly facing discrimination under the terms of the act, its responsibility for fair, consistent and equitable enforcement of the law, and its quasi-legal responsibility to administer justice under the act.

"This conflict raises significant questions about the commission's ability to carry out its function with the degree of impartiality that is expected by Ontario employers and employees, and that is required by the provisions of the Canadian Charter of Rights and Freedoms.

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"The commission's primary preoccupation with the design of appropriate systems and regulations for application to the Ontario government, municipalities, school boards and the broader public sector may reasonably be expected to result in precedents that are inappropriate to good management practices in the private sector--both in large and small companies--where personnel and compensation practices differ substantially from those in government.

"The employment standards branch has significant experience in communicating with the full range of private sector employers and their employees, and in promoting voluntary compliance within a commonsense approach to the administration of employment standards. The CTMA believes that the employment standards branch, whatever its perceived inadequacies among both employers and employees, is far better qualified to administer employment laws



governing tens of thousands of businesses than a new government agency preoccupied with establishing appropriate systems for use in government agencies and very large corporations.

"All companies whose compensation practices are challenged under Bill 154 should be considered innocent until discrimination has been proven to the satisfaction of a competent, impartial, independent authority.

"The CTMA recommends that this basic principle of Canadian justice be achieved by amending section 4 to include the following as basic criteria in the determination of value: individual performance evaluations; productivity; and availability of appropriately skilled labour.

"A basic principle of employment law is that the law should be fair and seen to be fair by both employers and employees. The CTMA is deeply concerned that Bill 154 reflect the realities of good personnel management rather than conflicting with them. The above mentioned criteria are fundamental to fair pay practices in our industry, particularly in its smaller companies.

"Inclusion of factors such as individual merit, productivity, the availability of skilled labour and differential bargaining power in an industry with substantial union representation in section 4 would give employers and employees greater freedom to set wage and salary scales based on their standards of fairness rather than those of a government inspector or tribunal with limited familiarity with the individual business conditions. Exceptions permitted in section 7, while recognizing the relevance of factors such as merit, productivity and temporary skill shortages still place the burden of proof on the employer.

"Aside from complying with basic principles of fairness and justice, this amendment would permit the government to focus its limited expertise and resources on those companies with major problems and disputes, an approach that is consistent with both good administrative practice and Ontario's relatively successful approach to employment legislation governing large numbers of business establishments.

"The CTMA recommends that section 7 be amended to include differences of bargaining strength as an allowable exception under the act.

"The CTMA finds it ironic that subsection 7(2) provides for 'differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength' after the commission's approval of the pay equity plan if not before. This would appear to be a tacit admission by the government that a difference in bargaining strength is a legitimate ground for the determination of value in employment. If this factor is applicable after the implementation of a 'pay equity plan,' the CTMA believes it should be considered a legitimate factor in determining the existence of 'pay equity' in the first place.

"The CTMA recommends that section 24 be amended to provide for full or partial compensation to any employer subjected to false, frivolous, vexatious, or otherwise unjustified complaint, subject to the decision of an impartial abitrator--such compensation to be paid by the government agency responsible for hearing the complaint.

"Employers guilty of offences under Bill 154 face substantial penalties. The cost of responding to an unjustified complaint for a small employer could amount to tens of thousands of dollars, thus imposing a disproportionate



penalty on any employer seeking to justify fair wage practices in the face of an unjustified complaint.

"Both the common law and many Canadian statutes, including the Income Tax Act and the Ontario Human Rights Code, provide for some form of compensation in the face of inappropriate legal action. Basic concepts of justice and equity demand that Bill 154 be amended to include provisions for compensation in the event of unjustified and unsubstantiated complaints.

"The CTMA recommends that subsection 2(2) be amended to increase the number of employees required for application of Bill 154 from 10 employees to 50.

"Bill 154 will ultimately apply to all companies with 10 or more employees. However, the legitimate arguments for the exclusion of very small companies from the bill's jurisdiction also apply to thousands of companies with more than 10 employees.

"Statistically based job evaluation systems, such as those promoted by many advocates of pay equity, have little or no statistical relevance in most firms with fewer than 50 employees.

"Job descriptions in smaller companies tend to be much more flexible and subject to frequent change as a result of changes in customer demand, the evolution of products and production technology, and the practical need for workers to perform various functions as a result of staff shortages or fluctuations in demand.

"Wages in smaller manufacturers tend to reflect community and industry norms rather than setting those norms, as in many larger companies. The creation of a costly, time-consuming, wage settlement bureaucracy is both unnecessary and counterproductive.

"The CTMA also recommends the creation of a simplified dispute resolution system for companies with between 50 and 100 employees, based on the model of a small claims court.

"The relative cost of regulatory compliance for smaller companies is several times greater than that of larger corporations, according to studies performed for the federal government."

I make a further exhibit, although it is not the government study itself. It is a publication put out by the Canadian Chamber of Commerce for the Business Committee on Regulatory Reform. The very first point it makes in its brochure is administration costs. "There are standards to implement, regulated activities to manage, forms to fill in and records to be maintained. Your employees spend time doing these jobs--and you pay." It goes on and on with 10 other points. I can leave this copy as well.

"If justice delayed is justice denied, it would seem reasonable to create a streamlined dispute resolution system for smaller companies that would allow these firms to use their limited resources for improving employee skills, productivity, and earning capacity rather than wasting them on unproductive legal and professional costs.

"The CTMA strongly supports the extended implementation period for Bill 154 as necessary for the development of appropriate industry scales in co-operation between the industry and government.

"The CTMA recommends the deletion of subsection 32(4) providing for anonymous complaints to the pay equity commission.

"Employees would enjoy protection against reprisals under Bill 154. Allowing anonymous complaints would encourage disgruntled individuals to make false, malicious or frivolous complaints that would result in substantial waste in both employer and government resources, and contribute to unnecessary uncertainties and disruptions among employees. Anonymous denunciations are not consistent with Canadian legal traditions, and should not be encouraged by this law.

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"The Canadian Tooling Manufacturers' Association appreciates the opportunity to present its views and concerns on Bill 154 to the standing committee on the administration of justice. We hope that you will accept our recommendations in order to make Bill 154 an instrument for promoting pay equity in fact as well as in name."

In summary, I have one final comment. This brief was prepared and written before the study was released, and we certainly commend the committee on its prompt action.

"Sincerely, Brian Taylor, secretary-treasurer, CTMA."

Mr. Chairman: Thank you very much, sir. Are there questions from the committee? I have one quick question. You indicated most of your industry is centred in Ontario. What percentage would that be? I imagine it is extremely high. In other words, the introduction of pay equity in Ontario would obviously impact on the largest percentage of your member companies.

Mr. Taylor: Probably in excess of 80 per cent of the tooling industry is based in Ontario. You are from Sarnia, and not too far down the road is Windsor. That is the tool town of Canada.

Mr. Chairman: Do you have a figure at your fingertips with respect to the number of companies you might have that would be excluded if the minimum of 10 were used as the criterion? How many of them would slip under that exemption?

Mr. Taylor: As I said on page 1, this was based on 160 firms, not on the potential 700 members that we are going after with the new directory. Of those members, 80 per cent have between 10 and 100 and five per cent have more than 100.

Mr. Chairma: What page is that on?

Mr. Taylor: Page 1, in the bottom paragraph, under the heading "Canadian Tooling Manufacturers' Association."

Mr. Chairman: Does that imply that 15 per cent--I am just using the number that is left over after the--

Mr. Taylor: That is right. That is what I am using. The 160 businesses that are already members of the CTMA are a good, representative cross-section of the industry. Perhaps there are even more, in that we tend to see the larger corporate members participate in associations, perhaps more so than the smaller shops, the one-man, two-man or three-man shops. The ones with 10 or more could be even larger.



Mr. Chairman: Could you give me an indication of whether you are a member of any other umbrella groups, the Canadian Federation of Independent Business or any of those groups? Do you belong to any of those as well?

Mr. Taylor: I think I mentioned when you were out of the room that the CTMA has recently joined ISTA, which is the International Special Tooling Association. Individual members may or may not be members of--you mentioned Bulloch's group, and what was the other one?

Mr. Chairman: Bulloch's group and a couple of others that have come before us.

I will be very honest with you. The reason I asked the question is that there are some similarities between your brief and some of the comments you make and those we have heard from other organizations. I wondered whether there are cross-discussions going on between a number of business groups that are presenting a rather uniform position.

Mr. Taylor: I imagine there are. I must admit I am not legally qualified, and the association sought legal counsel on that portion of the brief. I am pleased that, so far, no one has asked me any questions in that regard. I do not know where our legal counsel sought their expertise.

Mr. Chairman: I will ask you a question, and you will not feel any great discomfort with it. With respect to the maximum increases being held to one per cent of payroll per year, in your opinion from the standpoint of knowledge of the financial structure of the companies that are represented through your association, would that represent any undue financial burden on them?

Mr. Taylor: No, I do not think so, in that I firmly believe no discrimination exists right now within our industry. I can only speak for my own firm. I am the third generation at the helm of Taylor Tool. My grandfather started the company in 1918. We have 25 employees on the shop floor at present, of whom four are women. We would gladly hire more if we could find them. There is a shortage of skilled labour right now.

We certainly do not discriminate in their pay as opposed to the men. In fact, on many of the precision grinding jobs we conduct in our own shop, women are much better qualified than men. Men could not stand there in front of the machine doing this sort of fiddly operation all day, whereas women seem to excel at this type of job.

Mr. Chairman: Is the nature of the work in your industry such that, if you are complying with the letter of the law as it relates to equal pay for equal work, as opposed to equal value, making that distinction, most of your jobs are equal work jobs in the sense that they are doing exactly the same job and therefore are getting exactly the same work? Is a lot of that going on in your industry?

Mr. Taylor: I suppose there is some, but then we have a different complement of machineries. I suppose the basic machine in our industry might be a drill press or a radial drill, which requires a limited skill to operate, or even to set up and operate, right up to precision thread grinders or tool and cutter grinders, which are much more difficult to operate and take a lot more time to learn.

I guess I have lost track of my argument here. What I am saying is that



it really depends on the machine the operator is on. The lathe operator and the tool and cutter grinder operator are not paid the same wage, because the machines are different, the skills required to run the machines are different, and the time it takes to learn to run a more complicated machine is longer than for a simpler machine.

Mr. Chairman: One of the problems that is not addressed in Bill 154 but is a problem I certainly have some concern about is that many females find themselves in lower-paying jobs because of the traditional job categories that the educational system feeds them into. Rather than become doctors, many females become nurses, for example, and therefore, even though they may have the same abilities, the same skills that might be necessary to become doctors, because it is traditional for females to become nurses, they find themselves in that category.

Does your industry do anything with respect to encouraging females to get into nontraditional jobs like the tool and die trade or whatever, which are relatively high-paying, yet are not frequently looked upon as being female jobs?

Mr. Taylor: Most definitely. I think one would probably find that almost every shop has some female employees or apprentices on the shop floor. We have been encouraged by the various ministries, the Ministry of Skills Development and various other government bodies, to employ women in these capacities, certainly to start them off as apprentices.

Mr. Chairman: There may be questions from other members of the committee. If there are any, I will entertain them now.

There being no further questions, Mr. Taylor, I would like to thank you on behalf of the committee members for sharing your concerns and your thoughts with us. We will take those into account with the others that we have before us as we try to finalize some of the details of this bill.

Before members of the committee leave, please take all your material with you, because this is our last meeting of this week and we will not resume sitting until Monday at 10 o'clock. I ask again for your co-operation next week in trying to stay as much as possible to the time frame that we have established, since we have a heavier agenda next week than we had this week.

If there is no further business on the part of the committee that is required for the purposes of Hansard, I will ask Mr. Charlton to move that we adjourn.

Mr. Charlton: So moved.

Mr. Chairman: We are now adjourned.

The committee adjourned at 4:50 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

MONDAY, MARCH 2, 1987

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Smith, E. J. (London South L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ontario Chamber of Commerce:

Sanderson, J. A., President

Gray, D., Chairman, Employer/Employee Relations Committee

From the Ontario Coalition for Better Day Care:

Colley, S., Executive Co-ordinator

Rothman, L.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, March 2, 1987

The committee met at 10:14 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: The first delegation we will have this morning is the Ontario Chamber of Commerce. The three gentlemen who are here representing the chamber are John Sanderson, president; Jim Carnegie, general manager; and Doug Gray, chairman of the employer-employee relations committee. We welcome the Ontario chamber and look forward to its comments with respect to Bill 154. Whenever you are ready, we can start with your presentation.

ONTARIO CHAMBER OF COMMERCE

Mr. Sanderson: I am John Sanderson, president of the Ontario Chamber of Commerce. We are very pleased to be here today to have an opportunity to chat with you about this bill. As you know, the Ontario chamber consists of 150 chambers or boards of trade across the province with about 160,000 members. We have polled the members and held numerous meetings to gather the views we will be presenting to you today.

The Ontario chamber, as you know, does support the principles of improving opportunity for employment at higher wage scales for women and certainly the principle that is well established in most industry now, equal pay for equal work.

We have some difficulties with this bill. We believe it has a number of basic flaws and that it may not be the most efficient or practical way for Ontario to improve opportunities for women and for other minorities. We think that inherent in this is the fact that the bill ignores basic market forces which set job rates across the province based on supply and demand across the industrial spectrum, service and manufacturing industries, and government, for that matter.

We have some concerns about the fact that it sets up a whole new level of administrative cost in industry in the establishment of pay equity plans. In many cases where companies may already be adhering to the principles, they are still forced to set up that bureaucracy, and the bureaucracy is planned to be established in government as well to examine the plans, facilities and methods that the companies are using to achieve the objectives of the bill.

We also have some longer-term concerns about the economic impact in Ontario. Recently, we have asked for the impact studies to be released and we have two of the studies now. We understand four more are available. Unfortunately, we do not have those yet. We would appreciate copies of those, and we will study them and make additional comments after that review.

We know that up to one million workers could be affected and that the total bill for introducing the objectives could be as high as \$5 billion in the province. Considering the increase in competition that we face in terms of possibly freer trade in North America and across the world, we have some concerns about the economic impact and the time of implementation of the desired objectives.

We have as well some specific concerns about the bill and perhaps what we might call technical faults and some suggestions that could be implemented in the legislation to make the bill more accurate and effective. I would like to introduce Doug Gray who, as you mentioned, is the chairman of our employer-employee relations committee to talk with you about some of the specific suggestions we have for the bill.

Mr. Gray: We are obviously very grateful for the opportunity to be here. If some of the faces before you seem vaguely familiar, you will recall that this is not the first time we have been here, if not before this committee, at least before others of a similar makeup, to look at similar kinds of proposals.

You will recall from our previous appearances that, as John Sanderson has said, we have some rather serious reservations about the concept itself, about whether it is workable and whether in a North American market the impact of this kind of legislation might not have some rather far-reaching consequences when one has to compare the Ontario jurisdiction to others, bearing in mind that business in Ontario must, in the end, compete with businesses in other jurisdictions.

Having said all that, we have some specific comments on Bill 154 as drafted. You have before you the brief that we have submitted. It is not terribly long, but it does have seven or so specific remarks to make about the bill itself. I do not propose to read it, but I propose to highlight at least some of the main criticisms we have about the bill as drafted. We hope to leave some time at the end for any questions members of the committee may have.

Before I get to the brief itself, John mentioned there were some impact studies released last week. We have had an opportunity to put our hands on two of them. We understand there are perhaps three or four yet to come. They are out there somewhere. We have not seen them as yet. Obviously, we will be reviewing these studies with some interest to see what light they can shed for us on the potential impact this legislation might have. They are rather bulky documents, and we and the committee, I am sure, will need to take some time to review them.

1020

Just skimming through it briefly this morning, I could not help but notice in the executive summary of one of these reports, which is dated June 1986, a statement which is underlined on page 4 of that executive summary, which I noted in passing and which I found interesting. After quoting some statistics, the report says this, "The above findings suggest that there is considerable lack of understanding among small business employers as to what pay equity is," which I think is actually a rather startling but instructive statement.

It goes on to say, "The larger employers in the small business sector are clearly more aware of their lack of understanding than the smallest



firms." I am not quite sure what that means, but once again, it points up one of the main difficulties we have had with this concept. I think there really is a rather large lack of understanding of what the concept is all about and what we--and by that I mean the citizens of Ontario--are really letting ourselves in for.

As to the bill itself, you will see we have summarized our main points on page 2. These are not necessarily in order of importance, but let me quickly run through them and I will simply highlight what our concerns are.

One of the majors concerns we have is that the bill will, one way or the other, permit cross-bargaining unit comparisons between dissimilar jobs. The impact that will have on collective bargaining will be extraordinary. In our view, you cannot simply hive off this kind of wage bargaining from any other wage bargaining. The obligation under the Labour Relations Act of bargaining in good faith will exist. This bill seems to imply that, quite apart from that obligation, will be this separate obligation to bargain pay equity plans and all that goes with it with one or more trade unions.

Having gone through that exercise of bargaining these plans, the bill contemplates that, one way or the other, comparisons will be allowed between bargaining units or between people in a bargaining unit and employees who may not be in any bargaining unit. The impact that will have on bargained wage rates, bargained pay equity plans, is left completely up in the air. We simply do not see how we can work in any meaningful fashion.

The next thing we have a concern about is section 7 of the act. Section 7, as you know, purports to create some exceptions to the application of the bill. The one we are primarily concerned with is the exception that relates to what is called a labour shortage, a skills shortage. In our view, that exception simply does not address the main problem.

It may well be the case that an employer will have to pay a particular rate that has nothing to do with the fact there is a skill shortage. It may simply be that it is the case that the employees in question are, for one reason or another, able to command a significantly higher rate of pay simply because of the nature of the job or the nature of the skills in question. There may be all kinds of things. It may be that in jurisdictions outside Ontario the rate is significantly higher, for one reason or another.

In our view, and we have set out our suggested amendment on page 7 of the brief, it would be much more meaningful to amend the bill to reflect some market factor that would justify a higher or indeed a lower rate than might be strictly required under the definition in the bill.

The third matter we are concerned with also relates to section 7 of the bill and that has to do with the impact this will have on part-time rates. This really arises, in part, because of the definition of "compensation" in the bill, which includes all pay and benefits. We do not see anything in the bill that suggests it was part of the intention of those who drafted it that, as part of the policy, we should be aiming at bringing rates of pay for part-timers equivalent to rates of pay for full-timers or requiring a pro rata share of benefits for part-timers when compared to full-timers.

I have not heard anyone say that is part of the agenda for the bill. On the other hand, the way the bill is drafted, it may well be the case that this would be required, that an employer would have to pay equivalent rates and benefits to part-time employees compared to full-time employees.

If that is the intention, then I think we had better understand that is the impact of the bill. I think that is a subject that has to be discussed, put on the table and considered. We would hate to think that somehow this might slip through the back door as an unintended effect of the bill. If it is intended to do it, then fine, let us discuss it, let us understand it and let us realize that is what is being done; but if it is not intended, then we think there ought to be some amendment to ensure that is not an unintended effect.

Another matter we are concerned about is that there is nothing in the bill that defines a minimum number of incumbents in order that a job class be considered to be a job class under this bill. The way it is drafted at the moment, you could have a job class consisting of one employee. Frankly, we think that is a rather meaningless concept under this bill. To consider that statistically a job can either be a male job class or a female job class, depending on whether the one incumbent happens to be male or female, is silly. We suspect it was not really the intention to capture that kind of accidental statistic.

We note that the Manitoba legislation has a minimum incumbency of 10 that is required. We are not necessarily advocating that standard, but we do suggest there ought to be some reasonable minimum. We have suggested five, simply because it is obviously a little bit more meaningful than one. It could be as high as 10 or at least some reasonable minimum.

The next matter that we have some concern about is the definition of "establishment." It rather arbitrarily sweeps into the definition all operations of a business that happen to be within a county or a regional municipality or Metropolitan Toronto. In our opinion, that simply does not take into account the fact that many business organizations will operate more than one different business within a geographical division and each of those businesses may well have entirely different methods of operation, entirely different compensation schedules, entirely different collective agreements, entirely different product mixes and they may be entirely separate profit centres. To sweep all of them into one definition as an establishment, in our view, is a rather artificial and unworkable idea.

1030

The next matter we have some severe difficulty with, as John mentioned at the outset, is the obligation to prepare pay equity plans in the first place. In many cases this may be entirely unnecessary, and yet to require the expense, both the initial expense and the ongoing expense of preparing documents of this sort, in our opinion is unnecessary, particularly if it turns out that there is no problem in the first place.

The federal legislation does not require this as an obligation. The federal legislation appears to work. In our opinion, this is simply an additional burden on business that is unnecessary. In our opinion, this goes hand in hand with our last major concern, which is the bureaucracy that will be created as a result of this legislation, particularly with respect to the significant powers that are going to be conferred on review officers and on the Pay Equity Commission to a large a degree to run a significant part of the business operations.

We are very concerned that this is going to be a monster that could easily get out of control. When you consider the number of business organizations there are in the province, it is difficult to imagine the number



of people you are going to require to administer this legislation. When you consider that several thousand businesses are going to have to file pay equity plans, the number of people who are going to have to keep tabs on this and handle complaints is difficult to imagine.

One of the aspects we just touch on at the end of the brief is a rather troublesome one. We have noted that a complainant can remain anonymous. The complainant can select an organization to act for him or her. The particular complainant can remain nameless throughout the proceeding. We know of no other legislation that allows a complaining party to remain nameless and anonymous. We find this very troublesome. Indeed, I do not know how you would go about cross-examining your accuser if you do not know who your accuser is. We have very serious reservations about that aspect of the bill.

Obviously there are other aspects of the bill that we also find troublesome. If we were to list them all, the brief would be substantially larger than the one you see before you. We tried to highlight the main aspects of the bill that we find most difficult. We hope you may find it of some assistance in your deliberations on the contents of the bill.

Just in closing, as I indicated at the outset, we will be looking forward with some interest to reviewing the background papers that have been prepared with respect to the whole subject of pay equity. I know the members of the committee will also be reviewing them. We may have more things to say about the subject once we have had an opportunity to wade through what are obviously some fairly comprehensive documents.

With that, Mr. Chairman and members of the committee, we would be happy to entertain any questions members of the committee may have.

Mr. Chairman: Thank you very much for your brief and your comments. . . We do have questions from the committee. I will start with Ms. Gigantes.

Ms. Gigantes: Thank you for your brief. You have indicated you have 150 chapters and you have 160,000 members. May I ask what the average size of the firms in the chamber of commerce would be?

Mr. Gray: Perhaps John could speak to that, but I know from my own perception it would be very difficult to say what the average size is because the chamber has within its membership organizations of every conceivable size.

Ms. Gigantes: Would it reflect the nature of establishments within Ontario?

Mr. Gray: I think there is probably no organization that will appear before you that is more broadly based than this one.

Ms. Gigantes: My understanding is that there are about 308,000 businesses registered. What you are saying is that you represent close to half of them.

Mr. Gray: If your figure of 308,000 is accurate, and I have no reason to doubt it, then it would appear that we represent about half of them.

Ms. Gigantes: Have you made any estimate of how many of the part-time workers involved in businesses you represent would actually be covered under the clauses of these bills, specifically Bill 7?



Mr. Gray: No, we have not.

Ms. Gigantes: Does anybody else have any reading on that from your delegation?

Mr. Gray: I am not sure that anybody has any accurate statistics as to how many part-time employees there are in Ontario.

Ms. Gigantes: We are told there are about 500,000 and most of them are women. I am interested in this question because if we say there are two million women at work in Ontario and 308,000 of them will not be covered because they are working for firms that have fewer than 10 employees, and if we take off about 350,000 women who work--if I understand correctly--for the public service in Ontario and the public sector in Ontario, and then we take off a large part of the 500,000 who are temporarily employed part-time, on call, casual or whatever, we come up to something more than one million workers by my addition. I am interested in your analysis that would indicate to you that about one million workers might be covered by the legislation as you see it. Our calculations would indicate something less than that. I am wondering if you have made any analysis that would lead you to understand how many workers in firms represented by your chamber would be covered under the 60 per cent to 70 per cent comparison ratio?

Mr. Gray: The problem with all this is that we are all guessing. This is something we have observed before, which is why we had urged that studies of this kind be done. But really we do not have any figures; that has been part of the difficulty all along. For that matter, I cannot tell you how many people within our membership are going to be covered or not covered by the bill. We can speculate, guess and do eyeball figures, but I cannot tell you.

Ms. Gigantes: That is one of the problems I have with the bill too, though on the other side of the concerns.

Could I ask how many of the firms you represent would have collective agreements? Do you know what proportion?

Mr. Gray: I could not say in terms of numbers, but there is no question a very sizeable number would have collective agreements. A fairly large number would have more than one collective agreement, but I cannot give you any proportion.

Ms. Gigantes: Would it be possible for you to get that figure for us later?

Mr. Gray: We can try. Our means of any practical way of getting that information are limited, but we can do the best we can.

Ms. Gigantes: You indicated that you are concerned because you see the definition of a skills shortage as too limited to be useful in some cases from the employers' point of view. Could you indicate some examples? You made a kind of general reference to other clauses for what I guess you would call a situation where somebody was getting overpaid.

Mr. Gray: There may be many reasons why a particular individual can command a particular rate of pay. I do not mean to use specific names, but I am sure Mr. Gretzky would forgive me if I were to say his rate of pay probably has nothing to do with a skills shortage.

Ms. Gigantes: But we are not comparing an individual under this legislation. We are looking at positions and groups of positions.

Mr. Gray: Sure, but just to emphasize another point I made, if you are going to end up with a job class of one, then you are going to have an individual in that job class. If that person, for one reason or another, can command a fairly high rate of pay that may have nothing to do with the skills shortage, then we have a problem.

1040

Ms. Gigantes: Can you give me an example?

Mr. Gray: Just to use the analogy of a hockey player who commands a particularly high rate of pay, you may well have some kinds of occupations, let us say engineers, where at some points their rates of pay are high. It may have nothing to do with a skills shortage. It may have to do with the fact that in other jurisdictions engineers command high rates of pay and employers in Ontario, to remain competitive, may have to pay those kinds of rates. There may be all kinds of engineers on the market, but to remain competitive and to make sure we get the best engineers, we have to pay them. If we do not, we may suffer the best engineers going to other jurisdictions. We may still have lots of engineers left in Ontario, but they may not be the best ones. As I said, that has nothing to do with a skills shortage. We may be putting all kinds of engineers on the market.

Ms. Gigantes: When you are talking about a certain quality of a professional group, certainly quality of individual, surely in most cases we are not talking about the kinds of comparisons that are going to be made by Ontario firms for purposes of determining whether women are being discriminated against in their pay.

Mr. Gray: No. But the market rate for a particular occupation may well have a lot to do with making sure that, generally speaking, we can attract the best individuals to the business organizations in this province.

Ms. Gigantes: I assume an employer is interested in that through all categories of employment--

Mr. Gray: Absolutely.

Ms. Gigantes: --and I was interested in one other thing you suggested, which was that it was not reasonable to have a comparison if there was one incumbent in a position. I think of a situation where there might be one person who does the bulk of the office work in terms of reception, keeping correspondence going, maintaining communications links among members of an establishment, etc., who plays a pretty key role in the establishment; it might traditionally be a woman and her services might well be undervalued. Just because she is all by herself does not seem to me any reason why we should exclude her position as one that might be compared.

Mr. Gray: After all, we are talking about a statistical analysis in the end. It just seems silly to talk about a female job class or a male job class if you have one person in it. The people in Manitoba who drafted the legislation there obviously thought it was rather silly also to talk about that kind of statistical numbers game when you have one person or indeed anything less than 10 in that jurisdiction.



Ms. Gigantes: The Manitoba legislation is not definitive on that subject.

Mr. Gray: But you could have a swing back and forth from a male job class to a female job class, depending on who happens to be the incumbent.

Ms. Gigantes: I agree with you. I do not like the idea of male and female job classes, and I do not think that is a really useful way to go about it, but in terms of comparing the positions, if there is one person in a position and traditionally there has been one person in a position and traditionally that person has been a female, I think that either a man or woman occupying those kinds of traditionally female work ought to have a chance, under this legislation, to have their pay levels reviewed in comparison with other employees of the same firm.

Mr. Gray: I suspect this will not be the only thing you and I might disagree about.

Ms. Gigantes: I am sure it is not.

When you talk about your concern about anonymity of complaints, what is it that concerns you? You said you would not be able to cross-examine a person who was making an accusation.

Mr. Gray: That is a rather flippant way to put it perhaps, but in essence, in any case where someone alleges that his or her rights have been violated, normally the rules of natural justice would dictate that the person complained against has some right to know who the accuser is and to be able to confront that accuser and make a case. That is a rather difficult thing to do in this case where you may never know who the person complaining is; not a clue.

Ms. Gigantes: Presumably what you would be called upon to do as an employer is to provide a description of the positions and the pay rates in your firm. Why would that mean you would need to know who had laid the complaint?

Mr. Gray: Just to follow along your example, there may be a dispute over what the job duties are. I happen to be in the legal business. I have handled classification cases, many of them, and very often there is a dispute as to what the job duties are. The employer may come forward and say, "Here is what we say the job duties are; they are in this job description," only to be met with the answer, "No, the person we are representing says that the job duties are thus and so." How are you ever going to get that resolved unless you can sort it out one way or the other? The person in question says he or she may be doing something quite different from what the employer says. If we cannot confront the case, how are you going to resolve the dispute? And if it is resolved against us, then we have no way of knowing why or how, or even of confronting the person who has made the allegation.

Ms. Gigantes: The complainant will have a representative in the hearing process that is set out in Bill 154. Is that not the same kind of situation where you would discuss with the lawyer of another person?

Mr. Gray: Sure, and the person representing the complainant is going to say, "All I know is that this person tells me he or she does thus and so." Anybody who has been involved in any kind of litigation knows you simply cannot confront that kind of allegation.



Ms. Gigantes: You would not provide any anonymity for any complainant under this kind of process?

Mr. Gray: There is no anonymity provided for under the Labour Relations Act or under the Employment Standards Act or under any statute that I am aware of where someone complains that his or her rights have been violated.

Ms. Gigantes: Do you know that since we have had equal pay for equal work legislation, since 1951 in Ontario, of the employers who have fired women who have complained under that section of the act, none has ever been prosecuted successfully?

Mr. Gray: I will accept what you say, but I do not really see that has anything to do with this act, which has in it a section, as I read it, that prohibits any retribution against a complaining employee.

Ms. Gigantes: So does the Employment Standards Act.

Mr. Gray: And so does the Labour Relations Act.

Ms. Gigantes: Yes.

Mr. Gray: There are very significant sanctions provided for in the Labour Relations Act.

Ms. Gigantes: But no woman who has ever laid a complaint that she was not getting equal pay for equal work, even when it was upheld by the employment standards branch, has ever seen her employer successfully prosecuted when she was fired as a result of her complaints. I have seen that happen.

I think you had better look again at the situation and you will see that historically we can indicate there is a power imbalance there which means that if a woman does complain under the law and she can be identified by her employer and he can exercise some kind of discipline or retribution against her, that will happen and employers get away with it, as they have.

Mr. Gray: I would be surprised. It may well be that charges have not been laid. I cannot speak for those who administer the legislation.

Ms. Gigantes: One of the reasons we have business coming before us and saying to put it under the Employment Standards Act is that business knows perfectly well that employment standards on the question of equal pay have not been effective for women.

Mr. Gray: Once again, I suspect that may be one of the things you and I disagree on.

Ms. Gigantes: I would like you to show me the cases where it has been effective, because I can surely show you cases where it has not been.

Mr. Gray: I cannot tell you about prosecutions, but there have been many cases in which individual employees have obtained relief under the Employment Standards Act, just the same as the Labour Relations Act.

Ms. Gigantes: I have no doubt that is true. I have no doubt also that there have been many cases where employees have not only not obtained relief but have also suffered great work penalties.

Mr. Chairman: I have one brief question with respect to a number you used in your presentation, Mr. Gray. I have heard some rather widely varying figures relative to the potential cost of the introduction of Bill 154. I believe you used a figure of \$5 billion. As members of the committee, we have had some question of the government with respect to what its estimates are and at this time we do not have any firm, reasonably reliable figures as to the anticipated costs. Could you give me an idea of how you arrived at that figure or is that simply a guesstimate?

Mr. Gray: That is just about as good a guesstimate as any figure I have seen anywhere else. I recall the figures in the green paper were anywhere from \$1 billion to \$10 billion, with somebody resting on the figure of \$3 billion. For want of any better number, \$5 billion seemed to be halfway between \$1 billion and \$10 billion.

Mr. Chairman: The last one I looked at was in that general location.

Mr. Gray: The figure of \$10 billion may be a more accurate figure for all we know. I suppose we are being conservative, small-c conservative.

Mr. Chairman: There being no further questions, let me thank the delegation from the Ontario Chamber of Commerce. We always find your comments of interest and of value to us, and we will certainly take them into account when we review the bill.

The committee will take a brief five- or six-minute break. Our next delegation comes in at 11. Those of you who are still inclined may wish to indulge in brief conversations in the hallway.

The committee recessed at 10:53 a.m.

1108

Mr. Chairman: Members of the committee, we should get under way with the 11 o'clock delegation which I understand has now arrived. We have the Ontario Coalition for Better Day Care. Ms. Susan Colley is the executive co-ordinator. I would like to ask Ms. Colley to come forward. If there are members of your delegation who are going to be speaking to us as well, when you take your seat in the front, Ms. Colley, would you please introduce the other guests that you have with you?

Welcome. We look forward to hearing your views on Bill 154. Whenever you are ready, you can get under way and share your comments with us.

#### ONTARIO COALITION FOR BETTER DAY CARE

Ms. Colley: I would like to say we welcome the opportunity to appear before the committee to speak to our concerns about and recommendations on Bill 154. On my right are Brigid Kemp and Laurel Rothman, who are also members of the Ontario Coalition for Better Day Care.

We were delighted that Bill 154 was introduced as it suggested that workers in the broader public sector, which would include day care workers, would have access to pay equity legislation. We are, however, very concerned about a number of aspects of the bill, and that is what we want to address here today.

First, I do not think the drafters of the bill have a very complete understanding of the realities of day care workers. Day care is structured in



such a way that it is going to limit the accessibility of day care workers to this legislation. I would like to read to you a few of the occupational characteristics from our brief.

The majority of workers in day care centres are between the ages of 20 and 30, 99 per cent of whom are women. Most describe themselves as teachers, about 20 per cent are directors and six per cent are aides. Only half of day care workers are committed to staying in the field for 10 years or more because of the low wages. In 1983, zookeepers and farm hands made \$21,200 to \$22,400 compared to \$13,000 for day care staff.

Almost half of day care workers surveyed had completed one or two years of early child education training. Thirty-six per cent have more than two years ECE training with some university; 13 per cent had a high school diploma, while 11 per cent had completed their university degree. Day care staff then earned 72 per cent less than teaching graduates with no experience.

On average, the Ontario weekly wage of day care workers was \$267 a week in 1984, compared to the average weekly industrial wage of \$400. In Ontario, day care workers earned only 66 per cent of average weekly earnings. Even when compared to similar jobs, day care workers' wages are low. In Ontario, experienced day care workers receive only half the wage of experienced teachers.

General labourers and workers who care for animals earn 30 per cent more than day care workers. Workers with the lowest wages receive the fewest benefits and workers with the highest wages receive the most benefits.

It is apparent that although not all of this wage differential is attributable to gender discrimination, a high percentage of it is. The government of Ontario recently negotiated a contract with the community colleges, which awarded day care workers a 17 per cent increase as a pay equity adjustment. Starting rates of day care workers rose from \$17,800 to \$20,500. Without significant amendments to Bill 154, day care workers will not access this legislation and they will still be condemned to female wage ghettos.

I want to sort of describe some of the difficulties the legislation is going to pose in terms of the actual structure of our day care system. You may or may not know that there are three categories of workers in day care centres.

First, there are municipal day care centres where day care workers will have access to a male comparison group. Second, there are community day care centres that are located in or managed by larger institutions or establishments, such as community colleges, hospitals, community centres, YMCA centres, where they will also or may also have access to male job classes for comparison purposes.

However, the vast majority of day care workers are located outside either of those two categories in either for-profit or nonprofit day care centres that are managed by an independent community board or a board of directors of a corporation. We estimate this accounts for 86 per cent of day care workers and, therefore, these will be entirely left out of the legislation.

I want to divide the discussion into two categories. The first is our concern about the legislation as it exists and as it will affect those workers who will have access to pay equity legislation. Then I am going to conclude by talking about the problems for workers who will not have access to it at all.



First, on the definition of establishment, we are very concerned that this definition is not broad enough. As you have probably had pointed out to you a number of times, many municipalities sometimes divide their work force into two units of inside and outside workers, as they are colloquially called. The inside workers are generally predominantly female job classifications and the outside workers are generally male-dominated job classifications. What has happened is that the higher-paid categories are in the outside worker bargaining unit. We think it is a problem that we are not going to be able to use both of these bargaining units. Both of these bargaining units will not be included in the definition of establishment so that we can compare the higher-paid male workers to the lower-paid female workers.

Second, we are very concerned about a number of the exclusions that have been included in the bill. The first one I want to refer to is the question of casuals. You may or may not know that casuals are an integral part of our day system. As you are probably aware, there is a fair amount of sickness when workers are working in day care centres. Vacations are necessary and the day care centre has to continue. There is a lot of turnover in day care because of the low wages. Therefore, we have to have people who fill in during those periods. These are all casuals and they are an intrinsic part of the system. They are necessary for maintaining high quality, stable day care programs.

If casuals are going to be excluded from this legislation and not allowed to receive the same pay rates as permanent workers, then we are not going to be able to find casuals to be able to take up these jobs; yet these jobs are absolutely essential for the continuation of the day care programs.

Second, with respect to establishments with fewer than 10 employees, we find it very ironic that the Minister of Community and Social Services (Mr. Sweeney) has stressed along with the day care movement the importance of creating a day care system that has lots of flexibility, where programs can be set up in the community based on parental needs and so on. This often means small community-based day care centres, which usually have fewer than 10 employees. I would say the majority of day care centres in the province have fewer than 10 employees. That means the majority of day care centres and employees in day care centres will be excluded from this legislation.

If we are going to ensure that this option of a flexible, diverse day care system is to continue, then we think these workers need to be included in this legislation; otherwise, they are not going to work there. We are not going to be able to maintain high-quality staff in the small day care centres because they are going to seek jobs in the larger day care centres.

I have also outlined our concerns about female job class in the brief, which I will not go into here because it does not explicitly relate to day care workers at this time. However, we do see this as a problem for Ontario working women and we see it as a problem later on if pay equity becomes a reality in Ontario.

In terms of the basis of comparison, because of the fact that when you are comparing job classes, these job classes will be allowed for female workers will be the lowest paid male comparison group, we are extremely concerned that this will lead to manipulation of the legislation by employers. I think you have probably had this pointed out to you a number of times. We do not want to see a situation developing where there are two classes of employees: those who are set up to be the unit that will be used for pay equity adjustment purposes and those who will genuinely be able to be paid high wages.

if the work that is being performed is of similar value for also the highest-paid category and the lowest-paid category, why should women not receive the highest pay and not the lowest pay? In any event, even if you were not going to accept the highest pay, at least it should be averaged out.

As I outline here, we are concerned about the role of unions that is being outlined in this legislation. We think the bargaining agents must have the right to negotiate whatever methods are most appropriate to achieve pay equity. We do not accept that job evaluation plans are the only method. It is sort of like day care regulations. We do not accept that the minimum day care regulations required under the Day Nurseries Act should be the maximum regulations. It is similar with this here. If unions are able to negotiate better pay equity plans than would be filed with the Pay Equity Commission, we believe those plans should be able to exist.

The legislation must also specify a right of access by the bargaining agent to all the requisite information from the employer. If that is not possible, then we cannot see that day care workers are going to be able to negotiate an equitable pay equity plan. We think the union should be protected from unfair employee complaints against a pay equity plan that has been negotiated and ratified by the membership. The legislation should incorporate a duty of fair representation clause so that the rights of women to advance complaints about negotiations are clearly safeguarded. By so clarifying the role of unions in pay equity negotiations, the necessary checks and balances will have been legislated.

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On wage adjustments, we are very concerned that the minimum one per cent adjustment to be made by the employer each year until pay equity is achieved is inadequate, especially in the case of day care workers, where we think gender discrimination does account for a large proportion of the low wage inequity, and that it would take many years at one per cent of payroll essentially to achieve pay equity legislation. This leads us to the whole question of a sunset clause because we are very concerned that the legislation should not die before pay equity legislation has actually been implemented.

We think there is too long a time lag on the adjustment schedule, that it is going to take too long for pay equity adjustments to be implemented. I have to stress that especially for day care workers who will be at the end of the process. In many instances, this means the low wages of day care workers will continue for many years.

Those are the concerns we have about the legislation for those workers who will have access to it. Our major concern is that the vast majority of day care workers will not have access to this legislation at all. This is really serious because what we are contemplating is the two-tiered system of day care. I do not know whether this has been discussed by the drafters of the bill, but I think our day care system is already in enough confusion and disorganization without encumbering it with more problems. The problems are that if you create a two-tiered system of day care where municipal day care workers are able to earn much more than day care workers in the private sector, then I think you are going to begin to see the disintegration and the degeneration of day care programs in the private sector. That is not at all what I think this bill envisages.



In his speech to the Legislature introducing Bill 154, the Attorney General (Mr. Scott) proposed that the Pay Equity Commission of Ontario examine this issue on an urgent basis as soon as it is established. Our question is: Why wait? The government has heard numerous deputations on this question, has studied it extensively and is presumably in a much better position to resolve the problems arising than a heavily burdened Pay Equity Commission would be. I am quite sure the Pay Equity Commission is going to have enough business on its hands when it gets started than having to deal with all of these big issues of the day care question.

Of course, I am also more broadly concerned also about nursing home workers, library workers and other women who are in all-female establishments.

We think this problem could be resolved in one of two ways or a combination of two ways. We think that the definition of "establishment" could be broadened in the legislation in order to include day care workers. As you are probably aware, the broader public sector should include those day care centres that were covered by the wage restraint legislation, Bills 179 and 111. Both those pieces of legislation distinguished between the private and the broader public sector and imposed wage restraints on the broader public sector. We do not think it is unreasonable, therefore, to propose that the broader public sector be deemed to be one establishment for the purpose of pay equity legislation.

On the other hand, what could also be done is to allow pay equity adjustments based on public sector pay equity adjustments. What I mean here is that it would be very simple to include in the legislation a mechanism whereby day centres which are outside of the public sector could apply to the Pay Equity Commission to have a plan adopted that was based on an award made to public sector workers.

For example, in my earlier example of the contract that was negotiated between community colleges and the employees in the community colleges, the employees were awarded a 17 per cent increase based on gender discrimination. It would be very straightforward for private sector day care centres to be able to apply to the Pay Equity Commission and say, "We would like to be awarded the same pay equity adjustment that was awarded to the workers in the situation of the community colleges." We are talking about an award based on gender discrimination. We are not looking at other factors such as the strength of collective bargaining, government funding or those kinds of things.

Finally, this discussion is completely abstract unless the bill is amended to include the provision for a pay equity fund for workers in the broader public sector. As I am sure you all know by now, for years we have been arguing that day care workers have been subsidizing the cost of the day care system through their low wages. Parents are already excluded from the day care system because of the high cost of the fees. We have argued for years that there needs to be additional public funding of the day care system in order to make it more accessible, more affordable and of higher quality.

Like other human services, day care should be financed out of tax revenues so that everyone shares in the cost of this important service. The need for pay equity adjustments for day care workers provides another confirmation of the need for additional public funding. There is no way that parents are going to be able to bear the cost of increased fees due to pay equity adjustments. We believe the government should set up a special fund so that day care centres can access funding for day care workers' pay equity adjustments.



We hope that the drafters of Bill 154 will consider these concerns and recommendations and incorporate them into the body of the legislation to enable day care workers and the women of Ontario the opportunity to be paid the equal pay they deserve.

Mr. Baetz: Thank you for the brief. It is certainly very interesting. I would like to have you shed further light by providing a further breakdown on the makeup of this 86 per cent of the services provided outside of day care.

All of us who have been interested in day care, as I have for many years, have recognized that a lot of day care is provided outside of the established, formal day care centres and so on, but I have always been under the impression that a lot of this large group, which you call 86 per cent, was very informal. It was a very small and informal arrangement among parents and an aunt, an uncle, a grandfather, a grandmother, friends or relatives.

I would like to hear just a little more about these arrangements. If they are so very informal, then how can this legislation really penetrate that sphere of activity in any kind of meaningful and effective way?

Ms. Rothman: Maybe I will take a shot at that. Just to re-explain it, throughout the brief when we use the words "day care worker," we mean people employed in licensed day care programs. We are talking about people in group day care centres and supervised private home day care that fall under the Day Nurseries Act.

You are quite right that there is the other issue of many people giving care on an unregulated basis, if you will, the lady up the block, the grandmother. We are not talking about them. We are talking about people who receive a formal paycheque with deductions from day care centres and licensed private home day care agencies.

Even within that group--I am trying to think of an estimate of the number of them--there would be at least 20,000 in Ontario. I do not have those figures at my fingertips. We are talking about people who are bona fide employees in licensed programs, and 86 per cent of those people work in day care programs operated by either nonprofit community boards as nonprofit corporations or in commercial enterprises known as for-profit day care. The other 14 per cent, we are estimating, work in licensed programs that are operated by municipalities.

Is that a little clearer? We are still talking about the licensed system, not that unregulated system, which is a whole other issue.

Mr. Baetz: Yes. I see.

Ms. Gigantes: In the written brief you presented, it looks as if it is the number of day care centres you are talking about in terms of 86 per cent. Is it the number of day care centres or the number of employees?

Ms. Colley: The number of employees.

Ms. Gigantes: Thank you.

Mr. Dean: It was a most comprehensive brief. I appreciate receiving one that has been so well prepared.

On page 5, you talk about the basis of comparison if there more than one male job class was used. You are asking for the higher one. Then you also said, as a fallback position, the average. I think that in any case the average would be the fairer thing in the first place. Why did you not say that in the first place?

Ms. Colley: I think if the jobs were of similar value, and a male group is being paid the higher rate, then presumably, if it is estimated that the value is the same, they are actually worth the higher rate as well.

Mr. Dean: Can you not just as well argue that the person is worth the other one if it is a legitimate rate that some male job class is receiving? Why is rate A any more valid than rate B?

Ms. Colley: Essentially, because in a certain way it is historical. Given that women have been facing the burden of gender discrimination for many years, then why not give them the preference of awarding them the higher rates to make up for some of that inadequacy over all these years?

Mr. Dean: I do not think you are necessarily making up the inadequacy to the same people who have been the victims over the years, in the first place. Second, if you were an employer, you would say, "Why do they always want the highest rate?" I am trying to get you to say why the higher is so much better than the lower, except that there is more money in it.

Ms. Colley: It is a rhetorical question.

Mr. Dean: No, it is not.

Ms. Colley: It is a rhetorical question for me. I am saying why do you pick the low? Why not the high? Then I did say I really think we should be talking about an average rate.

Mr. Dean: That was really the basis of my question. Why did you not say that here? It would go over a lot better with all the people concerned. We had the same problem with some other people. I suggest you give that a little thought.

The other is on the top of the next page where you are talking about the need for the union to be protected from unfair employee complaints against the plan. That is an excellent idea. Would you also apply that to employers?

Ms. Colley: In what form?

Mr. Dean: I do not know. I am asking you. You say it should be protected from unfair employee complaints. Should employers be protected from unfair employee complaints?

Ms. Colley: It is my understanding that the initiative here has been taken by employers to file the plan. I am not clear in what form the employers need protection. Perhaps you can explain that to me.

Mr. Dean: If you are an employer and you file a plan, and I am an employee and I think there is some stupid jerky stuff in that plan and I file

what you might consider an unfair complaint, the same as a union might feel it was an unfair complaint if it were saying something else, what protection would you have in the bill for the employer?

Ms. Colley: I think all of that stuff is really set out in international labour practices, is it not? I am not an expert on bargaining relations--

Mr. Dean: I am not either.

Ms. Colley: --but I do understand there have been conventions set out in the International Labour Organization, which I understand Canada has adopted, that do refer to these kinds of situations.

Mr. Dean: We will check on that, but do you think it would be evenhanded that employers should be protected against unfair employee complaints?

Ms. Colley: I do not understand. There needs to be a concrete example.

Mr. Dean: I guess you have not been an employer, but I have been an employer and I know we get lots of complaints; some of them are fair and some of them are not.

Ms. Colley: But is it not the job of the Pay Equity Commission of Ontario to sort that out?

Mr. Dean: I do not know. I am asking you. You were saying the union should be protected and I am asking you should employers be protected. You have not really told me yet. I guess you are saying no.

Ms. Colley: Yes. I am saying no because I think employees--

Mr. Dean: That is interesting to know. Employers should not be protected.

Ms. Gigantes: They are in the bill.

Ms. Caplan: They are in the bill.

Mr. Chairman: Not against costs.

Mr. Ward: Against vexatious complaints. If it is spelled out on that basis, why do you have costs?

Mr. Chairman: Let us make it clear. It is not against costs. It is against vexatious complaints, which covers a portion.

Ms. Caplan: With respect, that is what our colleague was referring to.

Ms. Gigantes: If there is a cost, then you go to court to retrieve it.

Mr. Chairman: We are getting into a debate.

Ms. Fish: We are getting into clause-by-clause discussion.



Mr. Chairman: The chairman was completely out of order and I just ruled him back into order.

Mr. Dean: That would be the toughest job you had to do all day.

Ms. Gigantes: I would like to thank you for your brief. I think it is a very sharp reminder of the gaps in this legislation. First, when we had wage restraint in Ontario, may I ask you what the effect was in terms of the kind of funds that were available for wages in what you call private sector, which is the nonmunicipal and noninstitutional sector in day care in Ontario? Were your wages held back?

Ms. Colley: Yes.

Ms. Gigantes: Perhaps the parliamentary assistant to the minister can enlighten us on this. When I look at the definition of the public sector as defined in this bill, my understanding is that essentially when we look at the noninstitutional nonmunicipal day care field in Ontario, there is going to be no coverage under the definition of the public sector that is described in this legislation, either in the definitions in section 1 of the schedule or in the appendix to that schedule, under the heading of the Ministry of Community and Social Services.

Mr. Ward: I am sorry. I missed that.

Ms. Gigantes: Do you mean I have to say that all over again?

Ms. Fish: He was gossiping with the chair.

Mr. Dean: The chairman was explaining his previous ruling.

Ms. Gigantes: You would have to get rid of vexations and frivolous complaints on your right there.

What I am saying is the legislation we had previously in Ontario on wage restraint, and the period of restraint that we went through and which still continues, I understand, under this government, was one that definitely did have the effect of holding back the wages of people employed in nonprofit day care, which did not have a municipal base or an institutional base. When we look at the legislation, the schedule and the appendix to the schedule, such day care organizations would not be covered as part of the public sector.

In other words, when we look at day care centres, we would not be looking at a plan which public sector employees would have to produce and we are being told also that most day care centres would be left out because they do not have more than 10 employees. Is it the government's intent to say that most day care centres in Ontario are not in any way going to be affected either through a plan or through a complaint process?

Mr. Ward: That certainly was not the government's intent, which is why the Attorney General very clearly in his statement on the day the legislation was introduced mandated the commission to address that issue specifically and to look into other examples such as that.

Ms. Gigantes: No. Forgive me if I am wrong, but I think I am right. What he said was that he was going to mandate the commission to look into the problem with day care and nursing homes, etc., on the basis that there was no male comparable and the 60 per cent, 70 per cent ratio would not apply. There

has been no indication from the government up until now. In fact, it is only now that I realize, looking carefully at the schedule and the appendix, that most day cares in Ontario are not going to be covered by this legislation.

Mr. Ward: I will have to look into that. It is my understanding that the schedules that were produced in the bill actually did come from the Anti-Inflation Board schedules.

Ms. Gigantes: I think there were many ways in which restraint was exercised during that period. I can speak as somebody who was restrained and I was just a contract person.

Ms. Fish: Part of your salary was retainer or your fee for service.

Ms. Gigantes: That is right.

Ms. Fish: It would be an indirect compensation that comes into it. I think it is clear there were centres that were not formally covered under the AIB.

Ms. Gigantes: But effectively were covered.

Ms. Fish: But effectively were.

Ms. Colley: I think all day care centres were, all the day care centres that received a purchase-of-service agreement. The reason day care centres are considered to be in the broader public service is that even though they are not managed by the government, they nevertheless receive government subsidization through purchase-of-service agreements, through a contractual relationship with the government. It is in that sense that they had their wages restrained under Bill 179 and Bill 111.

What we are now saying is that if they were good enough, essentially, to have their wages restrained under Bill 179 and Bill 111, why are they not good enough to be included in the legislation under Bill 154?

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Mr. Chairman: Mr. Ward wants to make a comment on this. Then we will get back to Ms. Gigantes.

Mr. Ward: I believe the legislation covers all public sector day care workers--

Ms. Gigantes: Yes, but we just had it pointed out to us that 86 per cent are what we call the private sector.

Mr. Ward: --except the private ones that are 10 and under, unless they receive government funding. On page 62, items (n) and (o) refer to "day nurseries operated by corporations or municipalities under the Day Nurseries Act" and "day nurseries and private home day care agencies providing services and funded under agreements with municipalities under the Day Nurseries Act." I think it is extended to all--

Ms. Gigantes: Oh, oh. I did not flip the page. Correct.

Mr. Ward: --private ones under 10. Does that clarify it?

Ms. Gigantes: That does, but it still leaves the situation where we have to know how many will be affected by the fact that there is a constraint

on 10. When we say "direct subsidies," does that include the subsidized spaces? It does not mean operating subsidies.

Ms. Rothman: Could you read that?

Ms. Fish: Could we ask--I am going to pass a copy to the deputants; (n) and (o) are on page 62--Ms. Gigantes, I wonder if we could simply ask the deputants if they could tell us how many of their workers would be covered or, if they preferred an alternative, how many would not be covered by the provisions of (n) and (o).

Mr. Ward: I will undertake to bring in a clarification if that is helpful.

Ms. Fish: It would be; of numbers?

Mr. Ward: To the extent that we can.

Ms. Gigantes: I have one further question--

Ms. Fish: May I say that if you find it difficult to give us an answer off the top, perhaps you could give it consideration and get back to us with it.

Ms. Colley: Yes. These are agencies that have to be included in the legislation.

Ms. Fish: Correct.

Ms. Colley: I actually missed this appendix when we were writing our brief. The reason we made this reference to the exemption of day care workers was that Mr. Scott explicitly referred to it in his announcement at the press conference; so it was certainly his understanding that day care centres would not be included in this legislation.

Ms. Gigantes: No. The question he was raising was, how do you do a comparison, under the bill, of 60 per cent and 70 per cent female/male occupancy of classes? That was the next question I was going to ask.

Ms. Colley: That is the problem, yes.

Ms. Gigantes: The day care centres I am familiar with in the city of Ottawa, and some of them are municipal day care centres, frequently have an all-female staff, except for a cleaner.

Ms. Colley: That is right.

Ms. Gigantes: Under this legislation, what would be requested of the employer first of all would be a comparison based on the bargaining unit, if there is one, or among the employees of a particular day care if it were, for example, a community-based day care. What would that mean in wage terms? Do male janitors or cleaners of day care centres get paid on a similar low level to the other staff?

Ms. Colley: Yes.

Ms. Gigantes: So it would not be very helpful to do that comparison?



Ms. Colley: Absolutely not, no.

Ms. Rothman: It is also not a comparable job.

Ms. Gigantes: I beg your pardon?

Ms. Rothman: It does not appear to be a comparable job for the majority of jobs in day care.

Ms. Gigantes: Right. In fact, you would almost think that you should lump him in with comparable jobs and have him compared along with the female workers.

Ms. Colley: Yes. That is what we are saying. There is no male comparison group for 86 per cent of the day care workers in Ontario. It is in that sense that they will be excluded from the legislation.

Ms. Gigantes: There are several possibilities for exclusion--

Ms. Colley: That is right. What we are suggesting is that it would be very simple for employees in day care centres to apply to the Pay Equity Commission to be awarded a pay equity adjustment based on an adjustment made for workers in the public sector where there was a male job comparison class.

Ms. Gigantes: May I ask one other question? In the municipal day care sector, is it normal for there to be a separate local bargaining agent for a day care centre or a series of day care centres compared to, for example, people working on the staff of the municipality, at city hall or outside workers, or is it all one local?

Ms. Colley: It is usually all one local, and the day care centres are usually lumped together with the inside workers as opposed to outside workers.

Mr. Polsinelli: A quick supplementary to that, Mr. Chairman, perhaps addressed to the parliamentary assistant: Does the legislation not provide for cross-bargaining-unit comparisons where there are no male-dominated job groups within the bargaining unit?

Mr. Ward: Yes, it does.

Mr. Polsinelli: So in that type of situation, cross-bargaining-unit comparisons would be allowed.

Ms. Gigantes: But that will be the minority of day care centres and the minority of day care workers.

Mr. Polsinelli: No question--just in the municipal setting. Even though you are covered by only one bargaining unit in the municipal setting, if there is no male comparison within that bargaining unit, then that is where cross-bargaining-unit comparisons would be allowed within the establishment.

Ms. Colley: Yes.

Ms. Fish: But "within the establishment" is the key qualifier.

Ms. Gigantes: They will be covered.

Mr. Polsinelli: That was a supplementary, Mr. Chairman. Do I get to ask a quick question?

Mr. Chairman: You now have the floor.

Mr. Polsinelli: Ms. Colley, you seem to have pinpointed and reminded us again about one of the shortcomings of this legislation. I personally was not also familiar with items (n) and (o) in this schedule. I am now unsure whether the majority of the day care workers in the province would be covered, and I await a clarification on that from the parliamentary assistant at some future point.

My question, however, is in relation to those who are covered and those who are not covered. Assuming that the Pay Equity Commission deals expeditiously with the question of determining how to make the comparisons, would you not expect some type of spillover effect from those day care workers where a pay equity adjustment has been made and they are subsequently receiving a higher salary than those day care workers who might not be covered by this legislation? At some point in the future, if an adjustment is made, would there not be some type of spillover?

Ms. Colley: There are two parts to your question. Let me take them separately. On the first issue, of whether (n) or (o) includes day care centres, it is clearly stated here that day care centres are included. That is not the issue. The issue is that even though they are included, they have no male job class to compare themselves to.

Mr. Polsinelli: Unquestionably that is a shortcoming of the legislation and something you are telling us--

Ms. Colley: That is a shortcoming in the legislation. I quite appreciate it is anticipated that day care centres would be included. Nevertheless, because of the framing of the legislation itself, they cannot access the--there just is no male comparison group. There needs to be some other way that day care workers can compare their wages, presumably outside of their establishment, in some form. We are suggesting that the form be an application to be awarded a similar award to another group of day care workers who have been awarded a pay equity adjustment. I know other suggestions have come from other groups and communities.

On the second issue, though--what was it?

Mr. Polsinelli: Whether there would be a spillover between those who do receive an adjustment and those who do not. Essentially, my point would be that even though there may be some groups that are not covered, or there may be some day care workers who may not be specifically covered by this legislation because, let us hope, the majority of the other ones would be covered and would receive a pay adjustment, the market would actually come back and take corrective action and have a spillover effect.

Ms. Colley: That is right. The problem is that we are dealing with human social services. The way that day care works is it is a user-fee system. As we have argued in the general political sphere, the problem with day care is that parents cannot afford to pay higher fees. If a pay equity adjustment did spill over to the workers in day care centres outside of the public sector, the fees would have to rise for those pay equity adjustments to be made. That would mean more parents would be forced to leave the system, fewer parents would be able to afford day care and day care centres would therefore start to close down.

We are generally faced with this problem. The pay equity adjustment issue just reinforces and emphasizes it. That is why we make the strong recommendation in our brief that there must be some kind of pay equity fund in order that those adjustments can be paid to day care workers. It is useless, unless there is some government funding coming to pay for pay equity adjustments. Parents simply cannot afford more. They are already paying \$5,000 a year; if there is a 15 per cent pay equity adjustment, that is over \$1,000 a year. Do you see what I mean?

Mr. Polsinelli: Yes, I do.

Ms. Colley: We just have to have some kind of pay equity fund.

Mr. Chairman: The parliamentary assistant would like to make a comment with respect to a matter.

Mr. Ward: Just to clarify, I think it is understood that the only exemptions that extend into the area of day care are the same exemptions that are anywhere else in the bill, namely, the 10 and under, and that every other day care worker is covered in relation to the cross-unit comparisons municipally. That is probably where the least of the problems are, because those comparisons can be made within the municipal structure with some limitations. But I think you underline the real crux of the issue as it relates to day care workers and others; that is, the whole issue of funding.

Your point as to whether a pay equity fund has to be established is somewhat moot in that obviously any impacts from whatever mechanism is arrived at will have to be looked at. You have made two very good suggestions; I thank you for those, and those will be looked at carefully and seriously. But then it gets into the issue of fees, which puts day care beyond the reach of those who want to access it. It is not simply a pay equity issue, and I think we all recognize that.

Ms. Gigantes: What the parliamentary assistant just said indicates the exemption of 10 and under employees would exist; it does not, according to section 2, because in clause 2(1)(a) we define the public sector as those agencies listed in the schedule.

Mr. Ward: As usual, you are correct again. In the broader public sector, there is no 10 and under exclusion.

Mr. Polsinelli: But it would apply to private day care centres that are not receiving subsidies from the Ministry of Community and Social Services.

Ms. Gigantes: Yes, it would.

Mr. Ward: Because they are regulated.

Ms. Gigantes: How many of those would there be?

Ms. Colley: That is a good question. We do not know. I do not think the province knows either.

Ms. Rothman: The statistical base does not tell us--

Ms. Colley: It is probably 20 per cent to 25 per cent. Maybe that is high; it may be 15 per cent to 25 per cent.



Ms. Gigantes: But the stats are so bad that we would not be able to tell at this stage.

Ms. Colley: That is right. The province does not know the figure.

Mr. Chairman: There being no further questions from members of the committee, I would like to thank the delegation for an interesting presentation.

The committee recessed at 11:57 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

MONDAY, MARCH 2, 1987

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Lupusella, A. (Dovercourt L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From Canteen of Canada Ltd., Cara Operations Ltd., Eastwood Food Services Ltd., VS Services Ltd.:

Rolph, H. P., Legal Counsel; with McMillan, Binch

Coupey, P. H., Corporate Vice-President, Personnel, VS Services Ltd.

Individual Presentation:

Suddard, V.

From the Ontario Library Association:

Molson, G., President

Moore, L., Executive Director



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, March 2, 1987

The committee resumed at 2:07 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: The first organization we will be hearing this afternoon is the Concerned Group of Ontario Service Businesses. The representatives are all outlined on your agenda for this afternoon. I will ask Mr. Rolph to introduce himself, along with the members of his delegation. We can then get under way with our discussion.

CANTEEN OF CANADA LTD.  
CARA OPERATIONS LTD.  
EASTWOOD FOOD SERVICES LTD.  
VS SERVICES LTD.

Mr. Rolph: Good afternoon, Mr. Chairman and members of the committee.

Mr. Chairman: Could you sit down and talk into the mike? Sorry, I ask you to do that only because we can pick you up on the microphone a lot easier. It is more comfortable, and you will not tower over the committee and intimidate it.

Mr. Rolph: It is not often I have the opportunity to tower over anyone.

Mr. Chairman: You and I both.

Mr. Rolph: My name is Howard Rolph. I practise law with the firm of McMillan, Binch in Toronto. I am here representing four businesses that carry on in the food service industry: Canteen of Canada Ltd., Cara Operations Ltd., Eastwood Food Services Ltd. and VS Services Ltd.

In attendance with me today is Corinne Sklar, Philip Coupey of VS Services Ltd. and Robert Moser of Eastwood Food Services. In the audience are Al Morrow of Cara Operations and his solicitor, Brian O'Byrne of Fraser and Beatty. Unfortunately, there is no representative of Canteen of Canada Limited. As well, Mr. Gibson of the Golden Griddle Restaurants is in attendance today. He supports the views we are putting forward.

The members of our group employ over 20,000 employees in Ontario. Over 8,000 of these employees are represented by trade unions and are distributed among 175 separate bargaining units.

We are here today, not to debate the merits of pay equity legislation. We recognize there is a political consensus in Ontario that insists there must be better opportunities for women in the work place. Our concern is that the

legislation be workable, because if it is not workable, only the lawyers and consultants will profit, and there will be no real gains in compensation for working women.

We are concerned that this legislation has been conceived with the needs and resources of large, centralized employers such as municipalities and primary manufacturers in mind, and that the architects have overlooked the impact on smaller, diversified and decentralized employers such as the members of our group.

Before outlining the amendments we are recommending for the committee's consideration, I would like to outline briefly the operations of the members of our group. I believe before you is a copy of our brief. For easy reference, I have divided the brief into parts. Tab 1 is a short summary, and in tab 2, the full brief is set out. I am not going to read it; I am simply going to highlight what I think are the major points.

The distinguishing characteristics of the employers that make up the members of our group are that they are large employers for the purposes of this legislation in that they all employ 500 or more employees, but these employees are scattered across the province. Further, many of them are represented by a large number of separate trade unions. As well, the members of this group engage in different types or lines of business.

The line of business may well offer different types of employment conditions and wages, and there is very little interchange of employees between lines of business.

To give you an example of what I mean by that, I will first take VS Services Ltd. It employs 6,000 employees in Ontario, 2,000 of whom are organized. It carries on business in 411 distinct work places or locations. It deals with 13 different trade unions acting through 30 separate locals. It is bound, or will be bound, by 61 separate collective agreements. It carries on business in 39 geographic divisions, as that term is defined by Bill 154.

VS Services operates cafeterias in businesses and in industrial locations. It operates food services for universities, nursing homes, hospitals and prisons. It provides coffee systems for offices, institutional and industrial cleaning services, groundkeeping services and purchasing and warehousing services. It operates an airport kitchen service.

Cara and its franchisees employ over 11,000 employees in Ontario, 5,500 of whom are represented by trade unions. Seven different trade unions represent these employees. Cara and its franchisees are bound by 68 collective agreements. It operates restaurants such as Swiss Chalets and Harveys, two flight kitchens, a hotel and retail stores.

Canteen of Canada employs 2,100 employees, of whom 570 are organized. These employees are represented by three different trade unions. It is bound by 45 separate collective agreements. It operates in over 500 locations spread over 30 different geographic divisions, as that term is defined by the bill. It operates cafeterias, it provides vending services and office coffee systems and it sells and refurbishes vending machines.

Eastwood Food Services employs 850 employees distributed over at least six geographic divisions, as that term is defined. Those employees would be found in 150 distinct work places. It operates cafeterias and provides office coffee systems, vending machine services and catering services.



Those statistics translate into the following requirements if Bill 154 is passed in its current form: VS Services will have approximately 100 pay equity plans to implement; Cara will also have approximately 100; Canteen of Canada will have 75; and Eastwood Food Services will have seven.

With that daunting prospect in mind, we are recommending certain amendments. First, we turn to the definition of establishment and geographic division. What those definitions require is that an employer treat all employees within a geographic division such as, for example, the municipality of Metropolitan Toronto, as one establishment. All employees within the establishment, if they are unorganized, are to be covered by a pay equity plan. Under subsection 5(5), for those employees within a bargaining unit, if a male comparison group is not found within the bargaining unit, one can go outside the bargaining unit to find a comparable male job class.

This has major implications for the members of our group. For example, VS Services has 2,500 employees in Metropolitan Toronto alone. These employees are distributed over 130 separate work places; six different trade unions represent 500 of these employees located in 14 different work places. These distinct work places will offer different terms and conditions of employment, depending on the particular competitive climate that they carry on business in. The employees, from a personnel and labour relations point of view, are administered separately.

To take an actual example of what may happen, VS Services employs waitresses at the Great Canadian Soup Company, located in the Eaton Centre, who are represented by the United Rubber Workers. Those employees could claim that their work was of comparable or equal value to male vending machine attendants who drive all over Metropolitan Toronto and who are represented by the Teamsters. At the same time, dietary aides employed at the Salvation Army's Grace Hospital, who are represented by the Service Employees International Union, may maintain that their work is also of equal value to that of the vending machine attendants represented by the Teamsters.

VS Services will then be forced to negotiate with two separate trade unions about the work performed by the vending machine attendants, who are represented by a third trade union. While this is going on, VS Services may well be negotiating a new collective agreement with the Teamsters regarding the work and wages of these vending machine attendants. Needless to say, all three trade unions may have different views about the value of the work being performed by all classes of employees.

We might add that all these employees are employed in distinct businesses with different profit margins and different competitive pressures. Accordingly, we are recommending the following amendments:

Define "establishment" as each specific location where an employer carries on business or, as a less desirable alternative from our point of view, define "establishment" as each particular line or type of business carried on by an employer within any geographic division. Whatever the definition of establishment, restrict comparisons of unionized female job classes to comparisons with male job classes within the same bargaining unit, and restrict comparisons of unorganized female job classes to comparisons with unorganized male job classes at the same location.

The next issue we draw to your attention is the time frame for implementing pay equity plans. As I stated at the outset, for the purposes of this bill, our members are treated as large employers. They all have 500 or



more employees. We feel they are being put under a very heavy burden compared with large employers that have centralized work forces. As I stated a few moments ago, VS Services and Cara will each have approximately 100 pay equity plans to implement.

Let us take for an example what would be required of a large primary automotive manufacturer. You will probably find that it carries on operations in three or four geographic divisions as that term is defined by the bill. What that means is that production employees, who will be represented by the Canadian Auto Workers, will each be entitled to a pay equity plan for the particular geographic division they work in. There will then have to be an additional plan for unorganized employees within that geographic division. If some of the nonproduction employees--for example, clerical workers--are also unionized, there will have to be a third plan for them.

This process will have to be repeated in the other two or three geographic divisions where the automotive manufacturer carries on business. These employers, being centralized, will likely have a master collective agreement that will set out province-wide wage rates and province-wide job classifications. There will thus be uniformity of employment conditions in the three or four geographic divisions where pay equity plans must be implemented.

On the other hand, our smallest member, Eastwood Food Services, with 850 employees, will have to implement at least seven pay equity plans. This compares with six to nine for the major automotive manufacturer, which may be carrying on business in three or perhaps four geographic divisions. In the case of VS Services and Cara, they will both have to negotiate and implement in the range of 100 pay equity plans.

We feel it is wrong to place decentralized employers whose work forces are distributed across the province, represented by many different trade unions, in the same league as large manufacturers whose work forces are concentrated in one or two or perhaps three geographic divisions.

Accordingly, we would recommend that the time frame for implementation of pay equity plans be extended for any employer who is required to implement more than three pay equity plans in any municipality or county. We would recommend five years to post the plan and six years to begin making pay increments.

As a less desirable alternative, the legislation could provide that the number of employees in each establishment, defined as each work location, be the determinant of the time frame for implementing pay equity plans, or, as what for us would be the least desirable alternative, at least grant the Pay Equity Commission the power to extend the time frame for implementing pay equity plans where an employer must implement more than three pay equity plans in any municipality or county where there is an objection to any of the plans put forward by the employer.

The next issue that we foresee causing problems would be the requirement under the bill that one per cent of annual payroll be devoted to achieving pay equity. The bill does not specify how that one per cent is to be allocated among all the pay equity plans that must be implemented by an employer. This is a major concern for employers such as our members, because they have many different trade unions representing many of their employees. They are going to be faced with competing demands for the allocation of the one per cent of payroll that must be devoted to pay equity.

One can also foresee that if one trade union is dissatisfied with the result it obtains in pay equity negotiations for a job class represented by it, it will take the issue up at the bargaining table. This can lead to collective bargaining disputes. It is really no answer to say that either the Pay Equity Commission or the Ontario Labour Relations Board can sort the matter out, because if our members are faced with protracted and expensive legal proceedings before the Ontario Labour Relations Board, the pay equity commission, or both, they will not be able to implement this legislation within the time frames that are set out.

Accordingly, we would recommend to the committee that the legislation provide that one per cent of payroll for each bargaining unit at each establishment be devoted to achieving pay equity if a female job class is undervalued and underpaid, and provide that one per cent of payroll for unorganized employees at each establishment be devoted to achieving pay equity for any undervalued and underpaid female job class within that category.

It would be our fear that if the one per cent of salary has to be allocated on a province-wide basis, unorganized employees who lack the bargaining clout of organized employees will likely get the short end of the stick.

The next item we raise for your consideration is the right of a trade union under this legislation to press for a different type of job evaluation plan. Under the legislation, each trade union that negotiates in respect of a pay equity plan can put forward its own views as to the job evaluation system that is to be used. For an employer who must negotiate with many trade unions, it will be a very difficult task if he must evaluate different workers by resort to different types of evaluation systems.

You can envision the situation where one job class in the example I used earlier on, the vending-machine attendants represented by the Teamsters, could conceivably be evaluated according to two different types of job evaluation scheme, assuming that the trade unions representing the two female job classes claiming parity do not agree on what is the proper system to use.

Accordingly, we would recommend to the committee that the legislation provide that, where the Pay Equity Commission approves an employer's use of a particular type of job evaluation plan, the employer be at liberty to use that job evaluation system with respect to all other classes of employees, whether or not their bargaining unit agrees.

We point out to you that our members do not have job evaluation schemes in place. VS Services's preliminary estimate is that it will cost at least \$100,000 simply to be in the situation where it can begin evaluating the work of its various job classes.

I turn to certain definitional problems that we see with the legislation. I turn to the definition of compensation. First, the definition does not clearly include tips or gratuities that employees may receive. Many of our members employ waiters and waitresses who receive part of their income or remuneration in tips. Their wage levels are set at a level that is based on the expectation that the wages will be supplemented by gratuities.

In our view, if one is to measure properly the true value of the remuneration, gratuities should be included. Accordingly, we request that the committee consider making an amendment that would clearly indicate gratuities received by an employee be included in the definition of compensation.



We also note that the definition of compensation in the bill includes benefits. We are of the view that it will prove to be a difficult and time-consuming task to measure the value of benefits. Benefit costs, which are frequently reflected in what an employer pays in respect of a plan that is, in effect, sold to him by an insurer, can vary from year to year, depending on the experience of claims against the benefit offered by the plan. Further, the cost of the plan to the employer is not necessarily equal to the value of the benefit received by the employee.

Under the current section 34 of the Employment Standards Act, we note that an employer is prohibited from discriminating against his employees in terms of benefit plans on the basis of sex, among other things, subject to certain exceptions set out in regulations. We would have thought that if the Legislature wishes to deal with the question of gender discrimination and benefits, either section 34 of the Employment Standards Act is adequate or the Human Rights Code would be the better vehicle.

If there is to be a reasonable chance of implementing pay equity within the time frame envisioned by this legislation, the process cannot be too complex. We are of the view that if benefits are included in compensation, it must be factored into the comparison equations, but that will frustrate the intent of the bill.

Accordingly, we would recommend an amendment to the definition of "compensation" that excludes evaluation of benefits.

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The next definitional issue we raise relates to the definition of "employer." One of our members, Cara Operations, carries on a large part of its business through franchisees. These franchisees are separate and distinct employers who stand or fall on the profitability of their own particular restaurant.

We are of the view that the definition of employer should be made explicit so that an employer and its franchisees are treated as distinct entities for the purposes of implementing pay equity. There is a vast difference between a Cara franchisee who operates a Swiss Chalet and Cara Operations itself, which is operating, among other things, retail shops and the Cara Inn.

Under the legislation as currently drafted, there is the possibility that the franchisee could be compared with Cara proper. Further, to leave the issue unaddressed is simply to encourage litigation, prolonging the implementation of pay equity. Accordingly, we recommend an amendment to the definition of "employer" that would make it explicit that a franchisor and its franchisee are distinct employers for the purposes of the act.

Finally, we note that there is no right of appeal from the decision of the Pay Equity Commission. There appears to be a strong privative clause. We are dealing with novel issues of law and policy. The usual rationale for ousting the court's supervisory jurisdiction, for not having a right of appeal, is the expertise of the members of the administrative tribunal.

We respectfully submit that, at this juncture, there are no experts in pay equity. The Pay Equity Commission will be making decisions that will have a significant impact on employers, employees and trade unions. We submit that



there should be a full right of appeal to the Divisional Court on questions of both fact and law. We note there currently exists such a right of appeal under the Human Rights Code. We do not see why members of the Pay Equity Commission should have more autonomy than would justices of the Supreme Court of Ontario or the Ontario Court of Appeal. Accordingly, we urge the committee to include in the bill a right of appeal to the Divisional Court on both questions of fact and law.

In conclusion, we wish to say that Ontario is embarking on a major experiment. Bill 154 represents a dramatic way in which wages are established in Ontario. There are few precedents for the approach being taken by Ontario. It is true there is equal value legislation in both the Canadian federal jurisdiction and in Quebec. As far as the federal jurisdiction is concerned, the impact has not gone beyond the federal government and its crown corporations. There is very little literature on what has occurred in Quebec. Further, both the federal Canadian regime and the Quebec regime are complaint-based.

Manitoba has legislation that is closer to what is envisioned here, but being frank, Manitoba's economy does not correspond to Ontario's. Traditionally, Ontario has led the way in employment legislation. It is fair to say that Ontario's experience with pay equity legislation will determine its fate in Canada, if not North America.

Accordingly, we urge the committee to consider the amendments we have submitted so this legislation can be workable, such that both employers and employees can gain something from it. Thank you.

Mr. Chairman: Thank you, Mr. Rolph. We have gone somewhat beyond our time already and there are a couple of questions members of the committee have indicated they wish to raise with you.

I ask committee members to respect the time of the groups that will follow, since we are going to be running a little bit late, and to keep their questions as direct and succinct as possible. I know Ms. Gigantes will follow those words of guidance, and she will be first.

Ms. Gigantes: Thank you for your brief. Could I refer to the comments you made about the number of plans that would be required for each of the employer groups you represent? You suggested to us verbally that VS Services might be required under this legislation to have 100 pay equity plans, but if I look at page 7, the 2,500 employees that VS Services has in the Metropolitan Toronto area would all come under one plan.

Mr. Rolph: Not really, if I read the bill correctly. As I read the bill, if you have employees in a bargaining unit, for each bargaining unit there must be one pay equity plan. For all other employees within the establishment defined as the municipality of Metropolitan Toronto, there is to be one, so that the way you get the figures that I set out is to take the number of collective agreements each employer has. VS Services, if memory serves me right, has 61. It then operates in at least 39 geographic divisions. You are going to have unorganized employees in each of those divisions, so there is one plan there. That is how you get the figures.

Ms. Gigantes: Would it be easier if there were one overall plan?

Mr. Rolph: We do not see it that way. These different locations tend to be administered separately, particularly if they are in a different line of business. In other words, groundskeeping is a different business from the restaurant business. VS Services would find it easier to deal with this legislation if it could deal with each work location as a distinct entity, the way in which it basically deals with them right now for the purposes of collective bargaining. One of the reasons that you have as many collective agreements here as you do is that these work locations are administered separately.

Ms. Gigantes: Is there a difference between the degree of organization of female and male employees in the industries you are representing?

Mr. Rolph: Perhaps I can confer with my colleagues. We think there is probably equal distribution. I know that in the case of Cara, which would employ a large number of women as waitresses, there is a high degree of unionization. There is also a high degree of unionization for VS Services in the hospital and nursing home area where you have a lot of women employed.

Ms. Gigantes: On page 7, you have said: "...there is very little community of interest between the employees at the different work places and very little interchange of personnel between locations not administered as part of the same line of business. As a result, collective agreements tend to be confined in their scope to specific locations and do not cover several locations." Could you give me some examples of collective agreements that transcend the specific locations?

Mr. Rolph: The Teamsters' collective agreement.

Mr. Coupey: No, that would be a metropolitan certification. There are a few of the 61 bargaining collective agreements that are municipal bargaining collective agreements rather than unit bargaining collective agreements.

Ms. Gigantes: How would they work? Do they work well?

Mr. Coupey: It is different because if you look at the sole location certification, you are dealing with employees working at that one location. They report there in the morning and leave there at night. When you talk in terms of the vending business, which is covered by the Teamsters, they report to a central office but then do their functions at many locations throughout a given area.

The Acting Chairman (Mr. Stevenson): Could you identify yourself, please, for the benefit of Hansard?

Mr. Coupey: I am Philippe Coupey and I am the vice-president of personnel, VS Services.

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Ms. Gigantes: We have had made available to us--and I presume members of the public have had it made available to them too; certainly some of our presenters have mentioned it--a series of studies that had been done for the Ontario women's directorate by a number of consultants. In one of those studies that was performed by ARA Consultants--I do not know if you are familiar with it--

Mr. Coupey: I am familiar with it.

Ms. Gigantes: --there was a breakdown of the food and beverage industry as an employer in terms of the number of women, what job categories and so on.

Mr. Coupey: We did not participate in that survey because we have some significant difficulties in accurately reflecting that information. We spoke earlier of the cost to implement the job evaluation plans in terms of the outside quotes. Let us say the quotes are from \$50,000 to \$100,000. Part of the cost of that is being able and equipped to gather and generate that information on an accurate basis.

Ms. Gigantes: Yes. You are saying you really do not have that information base.

Mr. Coupey: We do not have an information base.

Ms. Gigantes: Did any of your members participate in any of those surveys, to your knowledge? No?

Mr. Rolph: I am not aware of the answer to that, Ms. Gigantes.

Ms. Gigantes: When I look down at the column for firms of 500 or more, you people may represent the only firms with 500 and more in the food and beverage industry.

Mr. Rolph: I do not know how many firms of 500 or more were canvassed in this study.

Ms. Gigantes: The total employment is 14,000 men and women.

Mr. Rolph: But it does not indicate which employers have been surveyed.

Ms. Gigantes: No, it does not. In any case, when I look down those columns, I see only two categories where women are highly concentrated in the food and beverage industry. One is in unskilled manual labour at the level of 55 per cent, and the other is clerical workers at a level of only 23 per cent. Would that reflect the placement of women in your firms?

Mr. Coupey: To a large degree, yes.

Ms. Gigantes: But this legislation would not apply then.

Mr. Coupey: In what respect?

Ms. Gigantes: Because you have to have groups of women predominant in a work class to the level of at least 60 per cent and groups of men predominant at least to the extent of 70 per cent.

Mr. Coupey: And in both cases they would qualify.

Ms. Gigantes: Then how could these columns reflect your employment situation?

Mr. Coupey: I do not know with respect to these figures because, as I said to you, we did not participate in those figures.



Ms. Gigantes: I wonder if you would care some time later to take a look at the ARA Consultants study. It is in appendix 3, for companies with 500 and more employees. If we could have your comments on that later, I think it would be useful. Thank you.

Mr. Coupey: Just to clarify that quickl, we have bargaining units that would be predominantly male, we also have bargaining units that would be predominantly female and, of course, then we have those that have the various mixes of both.

Ms. Caplan: According to this legislation, if you had a bargaining unit that did not qualify under the ratio of the 60-70, then the legislation would not apply.

Mr. Rolph: That is right, if there is no female job class as defined, but we are in the situation that when we get to subsection 5(5) which permits the boundaries of a bargaining unit to be transcended for comparison purposes--

Ms. Caplan: Only if you already have within the bargaining unit--

Mr. Rolph: Or if you have outside the bargaining unit. The legislation, as drafted, leaves open the possibility that you have an unorganized female job class that will be compared to a male job class within a bargaining unit.

Ms. Caplan: I understand that you do not have any job evaluation system in place. Do you have any database that would give an employment picture?

Mr. Coupey: I cannot speak for my other colleagues, but at VS Services we have had some job evaluation point systems in place within nonunion, traditional and management-clerical functions. What we do not have in place is job evaluation on a point basis system that covers most of the traditional bargaining levels where there is a large bulk of our employees. The establishment of rates of pay is determined through the negotiation process rather than through a job evaluation process.

The Acting Chairman: Okay. I think we had better move along. Mr. Polsinelli, you have a question, brief I hope.

Mr. Polsinelli: Thank you, Mr. Rolph, for a well-prepared, thoughtful and well-presented presentation. I would like to ask you one question with respect to the comments and recommendations that you make regarding cross-bargaining-unit comparisons. As you point out in your brief, cross-bargaining-unit comparisons are not allowed unless a male job class can be found within the bargaining unit to compare the female job class.

If section 55 of the legislation is not implemented or is dropped, what would happen is exactly what you recommend, but then you would also have what would appear to be some type of an inequitable situation where you may have a female job class and not be able to compare it to anybody. What would you recommend in that type of situation?

Mr. Rolph: That is one of the hardest issues to address in this area. One of the reasons some rates tend to be higher is that some employees have joined trade unions and obtained the benefits of collective bargaining.

We think it is unworkable if we have to compare employees in one line of business, represented by a trade union, with others who are in a different line of business, either represented by a different trade union or no trade union at all.

For us, it is like mixing apples and oranges, and we do not think it can be done. It is particularly a problem for our members, because they are operating different types of businesses within the same locale. It is not as if it is a standardized business like the automotive manufacturer.

Mr. Coupey: There is an interesting benefit that is going to come out of all this. We are going to be in a position where we are going to have job evaluation systems on a point-factoring basis in places where they do not exist today. If we are in a position where we have these plans in place and are doing comparisons of jobs on the same basis of the plan--the same evaluation, the same factors--then we are obviously going to have a more responsible view on the values of jobs across the province, no matter where they happen to be and no matter whether they are union or nonunion. It is going to put all of us in the position, which is an acceptable position, to have that in place.

In that instance at least, where there is no comparison, there is going to be an evaluation done for that particular function for those incumbents that is going to be open; it is going to be viewable; and it can be challenged.

Mr. Polsinelli: Given the specific clientele that you represent, what classes of female employees would you see being in a situation where there would be no comparable male job either within or outside of a bargaining unit? What categories would you see where there would be a problem?

Mr. Coupey: Personally, I cannot name one.

Mr. Polsinelli: Are you saying that within all your classes of employees, you would always have a comparable male job either within the bargaining unit or, if outside the bargaining unit, they would be able to find another male job class outside of the bargaining unit?

Mr. Coupey: I think there are always going to be jobs that can be compared. Whether they are comparable comparisons or not is going to rest on the evaluation.

Mr. Polsinelli: Effectively, what may happen is that, even though this limited cross-bargaining-unit comparison is allowed, it probably would not impact you at all, because in the majority of situations you will find there is another job class you can compare the female job class to.

Mr. Coupey: Internally.

Mr. Polsinelli: Exactly.

Mr. Coupey: Right. For example, if you look at the hospitals where we participate, there are going to be those internal pressures for comparisons against our employees versus the hospital employees. That is going to have to be a factor.

That is taken into consideration when we bargain. Obviously, it is going to be there as a factor when we get into pay equity.



The Acting Chairman: I think we had better cut that off and thank the delegation for coming in and stating its position very clearly and bringing forward an excellent brief.

Mr. Rolph: Thank you, Mr. Chairman and members of the committee.

The Acting Chairman: Next on the agenda we have Mrs. Vera Suddard. Take any position there at the microphone. Welcome. You can go ahead. Introduce yourself and the person with you and carry on with your presentation.

1450

MRS. VERA SUDDARD

Mrs. Suddard: Thank you. This is my husband, and he is here to support me. I am doing this totally on my own, simply because I work for a hospital.

I put together what I thought would be an equity program in our hospital, which was submitted to the Ontario Hospital Association for funding. I believe the plan was approved by the board. We were to get funding for the hospital. What I want to do is to outline some of the points I brought up in the plan, and perhaps you can use them in implementing the pay equity plan.

In my job as clerk in the hospital, I look at jobs and take job requirements. Obviously, the gentleman who went before did not have guidelines, but we do have guidelines. We look at the requirements of the job and we post job opportunities from that. Time after time I will take a clerical job that calls for a grade 12 education, at least one and possibly two years of community college, typing skills of 60 words per minute or whatever, communication skills, and these skills go on from there.

Right beside it, I will post a job that could be for a general cleaner, a dietary porter, a laundry porter or whichever. The pay scale for the clerical position will be approximately \$9.20 an hour in our hospital. The position for the porter will start at \$10.63. The porter will need grade 10 qualifications--grade 12 would be better, but grade 10 is fine--and we will train on the job.

I do not think any system that allows this amount of qualifications to go at this price and these limited qualifications to go for at least \$1.40 more can be fair. My plan--and it probably follows close to what this gentleman said--is to take each job and totally deface it, whether it is a male job or a female job, and start basing it totally on qualifications. On a point system, you give actual points for whichever skills you are looking for that are job-related.

I think in the hospital environment it really would not be that hard to do, because we do have a fairly adequate pay scale for most salaries, particularly in the ones that are unionized. In classifications such as technical positions where you have males and females both working, the pay is fair. Nurses are obviously in a bargaining unit and their job outline and their wage scale are fair.

Basically, what we really need to do is to form a standard for the jobs that are low-paid. As I said, in the hospital environment these are clerical jobs in particular. Make it provincial, much like minimum wage scales. A clerk who does such-and-such makes a salary between this amount and this amount. I



think that basing it totally on that rather than trying to compare whether a job is a male job or a female job would eventually lead to a pay system that is fair, based on education, qualifications and job skills.

Clerical jobs are gone into mainly by females and are low-paid. I think if it were a strictly across-the-board, fair plan based on everything, then there would be males in clerical jobs and females in other jobs depending on the pay scale.

I think we could begin a plan that would start even in high school. We can start basing subjects on points right at that level so that at grade 12, people coming out of school will know primarily what job salaries they are going to be looking at and can build their careers from there.

As I have said, I work at the hospital, and this is being funded through the OHA. An implementation system based solely on points can work within that system. Probably you can take it and move it outside the hospital, which is an area I do not know as well. There are a lot of jobs in little companies that have very wealthy owners. Quite often, the salary scale they pay is just slightly above minimum or minimum. If there was an actual salary range, which was much like a minimum pay for qualifications and it was published annually for everybody, a lot of these jobs could be brought up.

Ms. Gigantes: Thank you, Mrs. Suddard. It is a useful reflection to hear it from somebody on the personnel front line. The legislation we have before us deals in terms of comparing skill, effort, responsibility and working conditions. If you went through the line and compared a clerk's horizons in the work and a porter's, how would you compare them? You have given us an analysis of skill. Could you talk about effort, responsibility and working conditions?

Mrs. Suddard: As I said, I am facing it in a hospital environment, so I think the efforts are the same. I think you are looking at physical effort as opposed to mental effort. I do not think there is an actual way to measure that, but I think effort required would be the same.

Ms. Gigantes: And responsibility?

Mrs. Suddard: I think I would have to put clerical persons ahead, simply because they have their work to get out, they must do it properly and they need more skills to do it.

Ms. Gigantes: And working conditions?

Mrs. Suddard: I think working conditions, obviously, for the female would be better in my mind, simply because there is a controlled environment that is probably air-conditioned, this type of room, as opposed to the that of porters, which may not be.

Ms. Gigantes: Have you ever heard of the Australian method of paying people?

Mrs. Suddard: No.

Ms. Gigantes: They do precisely what you are recommending; that is, they establish benchmark pay levels for each category of work right across the federation of states.

Mrs. Suddard: No. I was not aware of that.

Ms. Gigantes: I cannot see us heading quickly towards that in Ontario, but I thought you might be interested to know it does exist somewhere in the world.

Mrs. Suddard: Thank you.

Ms. Gigantes: In the old scheme, Australian women were rated at 75 per cent of the standard, so that when they achieved equal pay plans in Australia, they rated women who held those positions at the same rate as men.

Mr. Dean: I want to make sure I understand Mrs. Suddard correctly in her suggestion about the point system. Did I understand correctly that your suggestion is to be province-wide for all jobs?

Mrs. Suddard: Yes.

Mr. Dean: Presumably, the province would decide in some way and then enforce a point system for every job, so that we would have what you might call a real grid system covering all occupations.

Mrs. Suddard: I think so. I think there are enough companies doing salary surveys and comparing jobs that it really would not be that hard to do that.

Mr. Dean: Do you see any problem with the fact that this would be really centralized personnel administration? You are talking about it being done by the province, presumably through some ministry, the civil service or somebody else. Do you see any problems with that?

Mrs. Suddard: I do not think I have any. Through salary surveys through major companies, the work is already there. It is just a matter of submitting it to the government.

Mr. Dean: The point is that at present company A and company B can hire their own consultants to get their own salary surveys and they do not have to submit them to the government for approval. Perhaps they have to submit them to the union for approval, but that is between them and their own union, if they are unionized, or through their employees on some other basis. You are really suggesting a massive bureaucracy.

Mrs. Suddard: Yes, but still in the context that there are going to be unions and they are going to negotiate.

Mr. Dean: But we do not have one big union negotiating on one big scale. You are saying every job is going to have a provincial evaluation number. As an MPP, I might be evaluated as zero, and everybody else would be from there on up. If I understand you correctly, there would be one fixed job value approved by some provincial body. Is that correct?

Mrs. Suddard: That would be close, yes.

Mr. Dean: That sounds an awful lot like the Soviet Union to me.

Mr. Polsinelli: Mrs. Suddard, thank you for taking the time to come in today. It is my perception that the opponents of this legislation think no problem exists. It is refreshing occasionally to have someone who is not part

of a large organization or representing somebody else but is coming in on her own and saying, "I think there is a problem."

I have also heard it said by some opponents of this legislation, if I may paraphrase the question they would have asked you, that if a porter is earning \$10.60 an hour, \$1 more than someone in the woman's job, why does the woman not become a porter? I know what my reaction would be to that. How would you react to something like that?

Mrs. Suddard: In a lot of capacities, women have changed over to the higher-paying jobs, especially in the cases such as general cleaners in our hospitals. Some will start, and particularly if money is a real problem for them, they will switch to being general cleaners. They will do the work, but I do not think that should have to be a criterion of which job is picked.

Mr. Polsinelli: I have one further question. You said, "if money is a real problem." Are the women you know at the hospital earning money just to supplement their husbands' income or is it money they need to support their families or to keep the families going?

Mrs. Suddard: It is money they need. There are too many single parents to say it is the other way any more. They need their money.

The Acting Chairman: Thank you very much, Mrs. Suddard, for coming in and stating your position very clearly and concisely. We appreciate it.

Do we want to carry on? We will have a three-minute break. Those of you who are smoking king-size cigarettes can work at it a little faster.

The committee recessed at 3:04 p.m.

1512

The Acting Chairman: We will get these hearings going again. It is quite fortunate the bill is not on evaluating the length of time, because our three-minute break has gone well beyond that.

Perhaps the next delegation, the Ontario Library Association, would come forward. Who is the spokesperson?

#### ONTARIO LIBRARY ASSOCIATION

Ms. Molson: I am the spokesperson, Mr. Chairman; Gerda Molson, the president of the Ontario Library Association.

The Acting Chairman: You may wish to identify those with you and then carry on with your presentation, please.

Ms. Molson: John Ridout is on my right. He is the chairman of our government legislation committee. Larry Moore, on my left, is the executive director of our association.

The Acting Chairman: Welcome.

Ms. Molson: Thank you for having us this afternoon. We apologize for not having our brief to you earlier. We had difficulty putting our brief together, which I think will be quite evident when I read it to you. In many cases, it raised more questions than it provided answers. With your



permission, I will read it as you have not had a chance to look at it prior to our bringing it this afternoon.

The Ontario Library Association was founded in 1900 and incorporated in 1969. Its principal object is to extend and improve all types of libraries and library service in Ontario. The association has approximately 2,800 personal and 300 institutional members representing public, school, community college, university and special libraries of many types throughout Ontario.

Of the individual librarians and library workers represented by our association, over 80 per cent are women. Although accurate figures for the entire field are not available, random sampling indicates that the overall percentage of women may be even higher than association figures suggest.

Traditionally, the library profession has been an undervalued profession, yielding low pay in comparison to other professional bodies. The historical reasons for this are clearly related to the introduction of women into librarianship by Melvil Dewey in the late 19th century. Virtually overnight, libraries changed from male preserves to female ones. With the change came all the prejudices that impeded women from entering university or rising in the work force, and with it also came low salaries.

Although conditions have certainly improved since those times, the profession has continued to be largely female and underpaid.

The introduction of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector, suggests that attitudes towards the value of women's work are maturing. Bill 154 defines a female job class as one in which 60 per cent or more of the members are female. Librarians and library workers in virtually all library institutions qualify under this definition. If the gender-neutral comparison system required by the legislation can be successfully established, our members could be among the groups to benefit directly.

The Ontario Library Association supports the intent behind this piece of legislation; however, the effectiveness of what is being suggested is more difficult to assess, at least for our members. As the representative of what must be considered one of the province's most important professional groups, we fully agree that our women members must be part of any pay equity legislation passed. At the same time, we know that many of our members have major misgivings, particularly from an administrative point of view.

Our appearance here today does not provide a definitive view of this issue but does outline a number of questions that concern us. The principal difficulties we will address are: (1) the identification of comparable male job classes; (2) the nature of the comparison systems to be used; (3) the control of the employer over pay equity; and (4) the economic impact of pay equity.

Since public libraries have between 80 per cent and 90 per cent female employees, what male job class in the library can be used to compare compensation paid to librarians and library workers? Within even the largest public libraries in Ontario, there is no male job class to use unless one is going to look to the security guards or the maintenance staff. Subsection 5(2) ensures that library workers will be paid at least as well as these two groups. However, that comparison is obviously not suitable when one looks at the criteria of skill, effort and responsibility outlined in section 4.

The immediate reaction we received from our public library members upon the introduction of Bill 154 was dismay. Newspaper articles at the time reinforced the suggestion that public librarians would ultimately find themselves excluded from the improvements that the government was trying to achieve.

We think there may be an answer to the dilemma if a male job class outside the specific library environment can be used. Since established public libraries are part of the municipal infrastructure, it is possible for the female job class of public librarians to be compared to male job class counterparts in municipal departments. Libraries and most municipal departments have similar organizational elements: a head of department, an assistant head, section heads and support personnel. Comparable areas of responsibility and skill can be identified.

However, this comparison would be possible only if the term "establishment," as defined in section 1, can be interpreted to include the municipality in which the public library operates. If the term cannot provide this latitude, we see no equitable way for public library employees to be dealt with under this act as written at present.

In other areas of librarianship, the male job class to be used appears to be more obvious. For instance, in universities and in community colleges, the male job class for comparison should prove to be the teaching faculty. Indeed, in many institutions, librarians have formal status as faculty members.

In schools, female teacher-librarians are treated as equals with their teaching peers as a natural part of collective agreements. Whether the head of a school library is acknowledged to have the extra responsibilities associated with a department is very unevenly applied and in many boards may merit inclusion in any equity comparison.

An inequity does occur between the female-dominated elementary schools and the more male-dominated secondary schools. Whether the secondary school staff actually fulfils the male job class definition of being 70 per cent male is difficult to say. If it does, there are definite inequities between elementary teachers and teacher-librarians and their secondary counterparts.

Nature of the comparison systems to be used: If public librarians may be compared with staff in municipal departments, the comparison system should be straightforward. In university libraries, if teaching faculty are to be the male job class compared, we can see how the comparison system could lead to dissension, or at least rationalization, that would ultimately negate the values intended.

For instance, how does one compare the research support activities of university librarians with the direct research activities of university teaching faculty? Administrators could argue that it is not possible to compare them at all. The librarian is responsible for the right information getting into the right hands of both students and faculty. Does this make his or her responsibility equal to or greater than the responsibility of the teacher, who is educating a limited number of students?

The situation is even more complicated in community colleges, where the formal qualifications and responsibilities of the librarian are normally higher than those of the teacher.



Comparing teacher-librarians to elementary and secondary teachers should be more manageable, although the Ministry of Education's permissive regulation on the organization of elementary schools may require different considerations in different boards of education. This refers directly to regulation 262.

Control of the employer over pay inequity: According to section 13, where a bargaining unit exists, pay equity plans must be developed jointly by the employer and the bargaining unit before they are posted. In instances where no bargaining unit exists, there is no provision for negotiations on the pay equity plan between the employer and the female job class group affected. Where the female job class is not assertive, we are concerned its rights will be ignored. A provision to require consultation with the female job class on the pay equity plan before posting would ensure that the women participate. We think they will participate well under these conditions.

Section 11 and subsection 14(2) pose further problems if we are interpreting them correctly. It appears that an employer could unilaterally decide there is no pay inequity within an establishment and that no further action need be taken. Given the questions around comparable job classes and the gender-neutral comparison system raised earlier in this brief, we feel an employer could conceivably step around the whole issue.

The economic impact of pay equity: Our information suggests that in most municipalities serving populations under 100,000, the application of Bill 154 would lead to higher salaries for public library personnel. In community college libraries, it would certainly lead to higher salaries. In university libraries and school libraries, because of comparability questions, the growth may not be as inevitable, and in large public libraries, pay equity may already be established.

Overall, it is clear Bill 154, if able to be applied fairly, would result in extra costs to the institutions involved. This raises the question of the economic impact of pay equity on the community.

Municipalities will need support if pay equity is not to precipitate unacceptable increases in property taxes or cuts in public services. At minimum, the provincial transfer grant to public library boards would need to be increased by the amount necessary each year to provide pay equity to public library staff. Such a move would remove the burden of payment from local taxpayers. The same grant increases would need to be considered for other institutions such as colleges, universities and schools if pay equity impacts in the way it might.

In conclusion, as a representative of such a major group of women workers in Ontario and notwithstanding the questions raised here, it is the position of the Ontario Library Association that if pay equity legislation is put into effect in this province, librarians of all types must be able to avail themselves of its intended advantages.

Ms. Gigantes: Thank you for your presentation. On page 1, you have given us an outline of your association's principles and its membership. Could I understand better, perhaps, when you talk about school libraries, are you talking about an association that groups schools within one board? How would your membership reflect school libraries?

Ms. Molson: Our school library membership consists of both elementary teacher-librarians and secondary teacher-librarians. It is the



teacher-librarian component that is our membership, the Ontario School Library Association.

Ms. Gigantes: Is that done on a board-by-board basis?

Ms. Molson: It is by individual. Boards are not in any way forced to belong to our association; it is the individual choice of the teacher-librarian to belong to our association.

Ms. Gigantes: How many of your members would be individual members as opposed to institutional?

Ms. Molson: There are 2,800 personal members.

Ms. Gigantes: Each membership is a personal membership?

Ms. Molson: That is right.

Ms. Gigantes: What would be the breakdown in terms of the institutions that your membership represents? Would most of them be school librarians or public librarians?

Ms. Molson: I will defer to our executive director.

Mr. Moore: Do you want it in percentage terms? The public librarians and public library trustees are also in our association. They represent approximately 50 per cent of our association. The school librarians represent about 30 to 35 per cent, and college and university librarians represent around 15 per cent.

Ms. Gigantes: Then your association is made up of what we might call both employees and management?

Mr. Moore: With the public library trustee, yes. We have no other representation of a similar nature from colleges, universities and schools.

Ms. Gigantes: Thank you for that. If I could go to the section on pages 7 and 8, which I found particularly interesting, you are concerned about the situation in which there is no union and there is a female-predominant group whose needs must be represented in a proposal put forward by the employer. Are most of the library workers represented by your association organized?

Ms. Molson: I would say 50 per cent are and 50 per cent are not.

Ms. Gigantes: Does that reflect the nature of librarians as a profession across the province?

Ms. Molson: It has more to do with the size of the public library than anything else. Certainly, the larger public library systems such as Metro, Scarborough and North York are very definitely unionized situations.

Ms. Gigantes: When you make a suggestion that unorganized employees should be consulted about the equal pay plan, it is a nice idea, it is certainly something that has occurred to me, thinking about this whole project over the last year and three quarters. On the other hand, I would worry that if it had general application, or if our legislation said it should, then we

would be asking women who might feel themselves to be very vulnerable to pressure by an employer to step forward and, in a sense, represent without a mandate. That would come through an organization such as a union. Is there anything to prevent employers of librarians from having that kind of discussion? Do unorganized libraries have associations?

Ms. Molson: Only the Ontario Library Association.

Ms. Gigantes: There is no other voice?

Ms. Molson: No, not that I am aware of. There may be some employee groups within particular institutions, but they are not well known. Certainly, we are hearing nothing whatsoever from them, if they do exist.

Ms. Gigantes: We had representation here in Bill 105 hearings from a group of government-employed public service servants, but I think they just had their own association within the government.

Do you think we should put into legislation a requirement that employers consult with unorganized workers when the situation of workers in a library may or may not be more civilized in terms of the willingness of the employer to take vengeance on an employee who is pressuring under this legislation without the backup of a union?

Mr. Moore: I think our concern in suggesting that it be mandatory that the employer talk with the unorganized women was that, if it was not that way, then any woman who came forward from that group and said, "You have not told us," or, "You have made a unilateral decision that we do have pay equity, and I am contesting that," would be put in that position; whereas if it were built into the legislation that some kind of dialogue had to take place, that no matter what, there was justification for the women to be talking to it, basically, we thought it would make it easier for them rather than more difficult.

Ms. Gigantes: Perhaps what we should do is to go the other way, which this bill does part-way, and suggest that it would be possible for a woman or women in that situation to ask for third-party representation.

If I could make one other gratuitous comment, I totally support what you are saying in terms of the economic impact of this kind of legislation and the absolute necessity that the province should take its responsibility for the cost of implementing equal pay in the public sector.

Mr. Chairman: Are there further questions from members? I am sorry I could not be here for your presentation. I had another responsibility I had to go to, but I will read your presentation and, of course, we can read it in Hansard as well. Thank you for coming before us.

The committee adjourned at 3:33 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

TUESDAY, MARCH 3, 1987

Morning Sitting



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Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the National Action Committee on the Status of Women:

Cameron, B., Member, Board of Directors

Peters, I., Member, Employment Committee

McDermott, P., Member, Employment Committee

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Canadian Manufacturers' Association, Ontario Division:

Kluge, H., Chairman; President, Ascolectric Ltd.

Filsinger, K., Industrial Relations Adviser

Miller, F., Member, Industrial Relations Committee; Employer Relations Manager, Pepsi-Cola Canada Ltd.

Keenan, J., Member, Industrial Relations Committee; Director of Labour Relations, Noranda Inc.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 3, 1987

The committee met at 10:07 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, I would like to get under way with this morning's hearings so that we do not run too late or too far behind. The first delegation to come before us is the National Action Committee on the Status of Women. We have Marjorie Cohen, vice-president, and Isla Peters, the board of directors' representative for southwestern Ontario.

NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN

Ms. Cameron: Thank you. There is a correction. Marjorie Cohen was not able to be here and I am standing in for her. My name is Barbara Cameron. I am a member of the NAC executive and chairperson of the social services committee of NAC.

Thank you for inviting us here today. I would like to introduce the two people who are with me. To my left is Pat McDermott, who is a member of the employment committee of NAC. She is a lawyer and sociologist who teaches and does research at York University. To my right is Isla Peters, who is a member of the NAC executive. Isla is the southern Ontario representative on the NAC executive. She is a community legal worker and is currently working as a staff representative for the Ontario Public Service Employees Union.

The National Action Committee on the Status of Women is a federation of 500 groups across Canada, a rapidly growing organization. We just went over 500 at our executive meeting last weekend. NAC is a cross-section of organizations, including professional organizations, women's business organizations, rights organizations and unions; there is a broad spectrum. Our membership also includes representatives of all political parties.

NAC is a national organization. We are interested in what is happening in all the provinces around the issue of pay equity and have been monitoring what is happening in each province so that we can measure the implications for the whole country. The position we are presenting today was developed by the employment committee of the NAC, which includes representatives from across the country. We developed the position in the employment committee in consultation with the people from Ontario who had a particular expertise on what is going on in this province. The position has been approved by the entire executive of NAC, which includes representatives from the Yukon, Newfoundland and other areas across the country.

NAC has a long history of lobbying provincial and federal governments for legislation to improve the conditions of women's lives. Equal pay has been a central and fundamental issue for NAC since we began in 1972. In fact, it is

largely because of NAC's efforts that the 1975 bill establishing the Canadian Human Rights Act was amended to include equal pay for work of equal value. Since then we have monitored and critiqued equal pay legislation internationally and, of course, across Canada.

Women in Ontario continue to subsidize the economy and their employers through gender-biased wage practices. They continue to earn less than two thirds of male wages. It has been almost two years since we have had a new Liberal government in Ontario working on the basis of the accord between the Liberals and the New Democratic Party. Despite the promises, we are still engaged in what seems to be an unending process of consultation, discussion and research. These delays not only cause cynicism and frustration, but they also compound the injustice of the present system in which women do not earn what their work is worth. Many women retire unable to benefit from the improvements in pensions that would come about as a result of equitable pay equity legislation.

NAC has worked closely with women's groups in Ontario to develop our analysis of this legislation. In particular, we strongly support the work of the Equal Pay Coalition in building consensus on the principles of pay equity.

As outlined in our green paper and our Bill 105 brief, NAC supports the principle of one bill for all workers. We stress, as we did in the hearings on Bill 105: "It is not clear why one group of Ontario workers should be put under different rules simply because they work for the Ontario government or because they happen to work in the public or private sector. Why should Ontario workers be divided by law in their attempts to achieve equal pay for work of equal value?"

There is no reason to segregate public service workers under a separate piece of legislation. NAC urges that this government pass strong pay equity legislation for all Ontario workers.

Ms. Peters: Not only do we want legislation for all women, we also want legislation that is simple to understand and feasible in terms of implementation. We want legislation that significantly contributes to closing the wage gap. NAC maintains that employers and unions should have the freedom to negotiate pay equity in a way that is most appropriate for their own work places.

Specifically, bargaining should be able to find alternative approaches beyond rigid job comparison systems and evaluation plans. There are other methods of achieving pay equity. For instance, one way is to equalize base and entry level rates; another involves integrating male and female wage schedules based on methods such as regression analysis. It is critical that the success of a pay equity initiative be measured.

Essentially, Bill 154 states that pay equity will be achieved when a specific type of comparison evaluation process has occurred. By definition, employers cannot fail to achieve pay equity if these steps of the process are completed. But defining pay equity in terms of a process is not good enough. The purpose and focus of pay equity legislation must be to close the wage gap, and the extent to which this is done will be the measure of the success or failure of the initiative. How this result is evaluated should be the subject of negotiations. Where there is no union, the Pay Equity Commission could produce guidelines.



Pay equity implementation becomes rigid and exclusive when only female- and male-predominant jobs are involved. NAC has always opposed the setting of numerical cutoffs. Gender predominance, in our view, encourages employer abuse and manipulation and prevents women clustered at the low end of male job classes from access to the legislation. Similarly, the added dynamic of allowing the employer to decide on various definitions of the establishment by combining geographic divisions creates new possibilities for the numbers game.

Where will the money for pay equity adjustments come from? Employers are to set aside one per cent of payroll per year, but public sector employers must ultimately get funds from the province.

Workers in hospitals, universities, municipalities, cultural institutions and social service agencies have been fighting cutbacks for years. Now pay equity will create even more pressures on already stretched financial resources. The services in hospitals, municipalities and social service agencies are often services that are predominantly used and provided by women. There must be transfer payments designated specifically for pay equity to enable employers in the broader public sector to increase the wages of those who require pay equity adjustments, without taking the money from other workers or further reducing the quality of already deteriorating services to the public.

Ms. McDermott: I would like to talk about a few technical problems we would like to stress in the drafting of the legislation. The first is the job evaluation problem.

Bill 154 requires a plan for each bargaining unit within an establishment and a separate plan for nonunionized employees. Comparisons remain within the establishment unless no appropriate comparisons can be found--we think this might occur with some regularity--and then female job classes may seek comparisons throughout the establishment. Of course, this could be done with other bargaining units to try to use their plans to seek comparisons. It could also be done in the nonbargaining unit.

How can this be done if the plans are different? To be compatible, job evaluation schemes must use precisely the same methodology; otherwise, jobs cannot be compared. One way we suggest this could be solved is by allowing alternative methods to job evaluation for the achievement of the plan. This would reduce the likelihood of your needing to go outside your bargaining unit.

A similar difficulty may arise when those seeking a comparison outside their plan run into differently designated establishments. If you read the definitions, the employer gets the opportunity to designate more than one territory or area as an establishment. Similarly, the union and the employer within each bargaining unit--and there could be multiple bargaining units--negotiate a definition of "establishment." We think this could be problematic in terms of exactly what definition of "establishment" you would use if you were seeking a comparison throughout the establishment.

We have three major points on the exemptions. We again stress our concern about the merit system. Even if you use formal performance ratings, they are subject to bias and favouritism. As well, we stress that skill shortages is another nebulous category.

We are very alarmed by the red-circling exemption. Since section 7 talks of downgrading and the freezing of compensation based on a gender-neutral

re-evaluation process, we are concerned that this clause almost waves a red flag at employers to signal the potentially hidden benefits of engaging in a pay equity process. This section raises the worst fears of those opposed to job evaluation procedures.

The next section is entitled "Where is the Equal Value Complaint Mechanism?" I will not read through this, because it is in our previous brief on Bill 105. We suggested a two-phased process. The initial phase would focus on reducing the wage gap. The second would be a complaints-based system, similar to that of the present Canadian Human Rights Commission.

Again, we are proposing this scheme. Bill 154 basically offers only a pay equity phase. Even that proportion of the wage gap that this effort could close would likely soon be re-established if the employer could point to bargaining strength as a reason for an ongoing wage differential once pay equity is achieved.

#### 1020

Voluntary compliance for small employers: Like many of the groups that support this legislation, we are concerned about the voluntary exemption being so broad as to include establishments of up to 99 employees. We think the five-year and six-year transition periods are far too long.

We also think the bill could be more explicit about exactly what happens after the transition period. The clause says that this section is repealed, but legally we have another lawyers' debate on this issue. Precisely what is going to happen after the transition period? Are employers now compelled to post a plan under section 6? If that is so, we think a posting date should be set out in the bill. If they are to come under simple complaint problems, we do not have a plan; we think we need one, but it could add another year or two to an already long five-year or six-year wait.

Employers not covered: Employers with fewer than 10 employees on the effective date are not covered by the legislation at all. As well, the mandatory requirements of the bill cover only employers who have employees on the effective date. This means new employers who begin to operate in Ontario after the effective date are not covered by these mandatory provisions. Both these exclusions mean thousands of women in Ontario arbitrarily will not receive the benefit of this remedial legislation.

NAC wants the Ontario government to enact strong legislation to achieve equal pay for work of equal value in this province. Those who do long-undervalued women's work have been waiting long enough. We urge this committee and all three parties to move swiftly to clean up the confusion that has been created by the two separate and different pieces of pay equity legislation. The eyes of Ontario women remain on this government. It is now time to act fairly and decisively.

Mr. Chairman: If that completes your presentation, we will go to questions from the members of the committee. Thank you very much for your brief and your comments.

Ms. Fish: First, let me thank you very much for the presentation. It was very clear and direct.

The one area I am unclear about and with which I wonder whether you could assist is in the section on employers not covered, which you just touched upon, and the indication that new employers will not be subject to the



requirements to ensure that there is no gender-based discrimination in their pay systems. Can you help me by pointing to the section or area from which you are drawing that interpretation?

Ms. McDermott: This is one interpretation. Subsection 10(1) says, "This part applies only to employers who have employees on the effective date," which sounds like our rent control legislation. It applies only to apartments that are now built. Any apartments that are built next month or tomorrow are not covered. It is a concern.

Ms. Fish: May I ask the parliamentary assistant whether he shares that interpretation?

Mr. Ward: No, I do not share that interpretation. Under subsections 6(1) and 6(2), in the year coming on stream, any new employer is compelled to have in place a plan, and those employees have available the complaint-based mechanisms should there not be a plan.

Ms. McDermott: I would like to question that. Would it require a complaint if you are a new employer and you have just set up a firm? Quite clearly, you would not be under the mandatory section.

Mr. Ward: There is a requirement of the employer to come on stream in the context of the pay equity legislation and to have as part and parcel of his operation compliance with the pay equity legislation. There is recourse for the employees through a complaint if they feel the employer has not opened up in compliance. The intent is that any new company coming on stream come into compliance with regard to the bill.

Ms. McDermott: We would really stress, if that is the intent, it should be set out simply and clearly that new employers come under the mandatory provision and similarly, at the end of a six-week transition period, small employers must go to the plan. We find it amazing that it is not there, frankly.

Ms. Fish: Thank you. I did not have any further questions.

Mr. Chairman: Mr. Ward, did that clarify it? You had a supplementary to Ms. Fish's question. You are all right on that?

Mr. Ward: Yes.

Ms. Gigantes: I wonder if you have attempted to make an estimate of how many of the two million women who work in Ontario would be covered and how many would not be covered under this legislation.

Ms. McDermott: Frankly, we have not. Because of the problem of establishment, we would need more precise data. You could say that a woman who works in a small cleaning outfit would not be covered, but if you look at the definition of "establishment," the geographic territory of being in Metropolitan Toronto would add up all the cleaners, so, in fact, it would be very difficult to assess. The data, typically, talk about people working in small establishments. My guess is that the geographic nature of the establishment definition would bring in more women than we ever can imagine; it is very difficult to say at this point, but we are working on it.

Ms. Gigantes: I would be interested in any estimate you can come up with, because I have been trying to wrestle with that problem. Would it



surprise you that the consultants providing reports on implementation by small business for the women's directorate have indicated that they believe 84 per cent of firms employ fewer than 10 people? I do not know how the geographic decision is going to affect that.

Ms. McDermott: That is right. Again, the firm is not the definition used in this, so we are aware of that, but we would need more precise data about where firms are located, and if they are in the geographic areas, we would add them all up. Again, it might be broader coverage than we are anticipating.

Ms. Gigantes: Do you think the 60-70 per cent test for comparability is going to reduce significantly the number of women to whom equal pay adjustments might be made available under this legislation?

Ms. Peters: We think the critical thing, in terms of the whole phase-in, is that it can apply in the proactive phase, but that the women who have missed out have access to the complaint mechanism through a strong complaint mechanism. Again, we have no data.

Ms. Gigantes: Can I go then to the questions you had about the complaint mechanism specifically? I understand what has been laid out for us in your submission. Essentially, what you are saying is that an employee can complain under clause 21(2)(a) and clause 21(2)(b), but that there does not seem to be any direct relationship between that section and section 6 which is the more general section spelling out the obligations and responsibilities of employers.

Ms. McDermott: Again, I read section 6 as section 5. As soon as you say in section 6, "provide for pay equity," legally pay equity is defined by the act and you go back to section 5 and section 5 is a plan where it requires comparison. There are other interpretations. I think that is probably the most straightforward one. When you read through section 21, there might be possibilities for other types of complaints but, quite clearly, that the plan is not being implemented. We feel the complaints simply go back to the definitions in section 5, which is this plan, but there is a problem with it.

Ms. Gigantes: So you would read subsection 21(1), a complaint about a contravention of the act, as relating basically to section 5, which spells out the 60-70 per cent comparison in the whole definitional base for pay equity as it is laid out in this bill?

Ms. McDermott: Yes.

Ms. Gigantes: Which is not what you would look for under the International Labour Organization convention?

Ms. McDermott: No.

Mr. Chairman: Further questions from the committee? Mr. Ward wanted on earlier. I will then go Mr. Dean, then Mr. Baetz.

1030

Mr. Ward: Thank you for your brief. One question I have is your reference to section 7, and you seem almost to be dismissing that categorically in terms of your concern over having the section 7 exemptions. Are you, in fact, suggesting that factors such as skill, effort, working

conditions and responsibility should be excluded as considerations in determining compensation levels?

Ms. Peters: We think job evaluation plans that depend on skill, effort, working conditions and responsibility can be one route to go, but it is not the only route. There are other routes that do not depend on using those criteria and we think those routes are equally legitimate.

Mr. Ward: So your point is that there are other alternatives.

Ms. Peters: That is right.

Mr. Ward: It is not a complete dismissal of the exemptions, providing they are free of gender bias, that are contained in the proposed legislation.

Ms. Peters: We do not want women in this province to be told they are going to be in for job evaluation based on those criteria. We want other options.

Mr. Ward: You do not want to limit it to that.

Ms. Peters: That is right.

Mr. Dean: I believe my question, as it happens, is something like a supplementary to what the parliamentary assistant has asked. Specifically, during the presentation on page 5, I believe it was Ms. McDermott who said it on exemptions--

Ms. McDermott: Yes.

Mr. Dean: You gave the impression, and the expression is here, that merit systems are most undesirable. You say they are subject to bias and favouritism. Do you reject any kind of merit system in the determination of what is really work of equal value?

Ms. McDermott: It is the position of the National Action Committee on the Status of Women that we would like to see legislation with as few possible loopholes, and we see a merit system very much like I would say the union movement has seen it, as an area where employers can pay very different salaries and just say, "We have a merit system in operation." I know the suggestion here is that the merit compensation plan is based on formal performance rating, but again, what does that mean? That really comes down to interpretation, evaluation by the employer, that someone is worth more than someone else.

Mr. Dean: Is not the whole system based on somebody's evaluation of what a job is worth?

Ms. McDermott: We would caution that most job evaluation systems would never have a merit component in them to begin with. They would say, "We are evaluating the job, not the person." So they would not have them in to begin with. Merit would come in later, once you have people in a structure, that you would be paying some more because you feel they are more valuable. That is the way merit systems tend to work.

Mr. Dean: That is what I understand the merit system to be, but it sounds from what you have said and what you have written that you do not

believe that has any place here. Where do you see it coming later? If you, as an employer, considered me to be more valuable than Ross Stevenson--although it is hard to imagine that--because of the merit of the way I am performing or some other factor that you use in determining merit--let us agree that everybody does not do the job the same way--how would you think that impacts on this kind of system?

Ms. McDermott: Very simply, I know you have heard a lot of presentations about merit systems and employers tending to want them. We are not in favour of a merit system at NAC.

Mr. Dean: You would say it should have no place whatsoever in this kind of scheme that we are discussing.

Ms. McDermott: Right.

Mr. Dean: How then do I, as an employee, get recognized by putting in exceptional performance?

Ms. McDermott: You get promoted.

Mr. Dean: You do not always get promoted.

Ms. Peters: If the employer wants to promote you.

Mr. Dean: You do not always get promoted. There is not always a place for a promotion. Let us not use that as a shibboleth.

I take it we have to say you would see there is no place for merit in the system?

Ms. McDermott: No.

Mr. Dean: The convoy system.

Mr. Peters: I would like to add something about the red-circling in terms of job evaluation because it is certainly our experience that red-circling occurs in job evaluation systems that are not related to pay equity. We find it quite incredible that red-circling would be put into the act as a practice that employers could use in order to achieve pay equity. It is red-circling of women's wages as well as men's wages. We find that appalling and really divisive. That is going to be very difficult for people to accept.

Mr. Baetz: You have quite correctly noted that if this legislation were to apply in the public sector--hospitals, universities and so on--there would have to be an increase in transfer payments. I think that is correct; I feel that way. That is obvious. Have you tried at all to estimate or guesstimate a price tag, how much this might conceivably cost in global figures? I gather you feel the problem is fairly large. Therefore, one might guess that to solve the problem would require substantial funds. Have you any ball-park idea on that?

Ms. Peters: Not in the public sector. I do not, and NAC does not, have the figures in the public sector. We have the figures for the public service.

Mr. Baetz: You do have figures?



Ms. Peters: For the public service, not the public sector.

Mr. Baetz: What are the figures for the public service?

Ms. Peters: On the basis of closing the wage gap in the public service, I believe it was calculated as \$130 million. That was your calculation, not ours. That was the government calculation. As far as the public sector is concerned, we do not have figures and I do not know whether those figures are available. I would be very interested in seeing them.

Mr. Baetz: I am asking the question anyway. What percentage roughly of the public sector is the public service?

Mr. Peters: It is not. Under this bill it is separated. I am sorry.

Mr. Baetz: It is \$130 million. Was that per annum or over the adjustment period?

Ms. Gigantes: Yes, that was that whole job.

Ms. Peters: Although I am not familiar with the data, I suspect the other difficulty is that the public sector is thrown in with the private sector and the wage gap calculated across both. I am not sure what data are available.

Ms. Gigantes: It depends on how we apply this legislation.

Mr. Baetz: I used to assume that whenever you introduced legislation, you always had a bottom line that said "Financial Implications."

Ms. Gigantes: Like rent review, when you introduced it.

I do not want to take up too much time, because I had a chance for questions before. I am really interested in the whole question of these formal systems which we will allow to displace the question of equal pay; for example, the seniority system. Can you attest to having seen seniority systems which are gender-neutral? Do you think such can exist? We were certainly told by the Federation of Women Teachers' Associations of Ontario that it believed seniority systems could exist and be gender-neutral. They thought they operated in such a system.

Ms. McDermott: If they are simply based on time worked in the establishment, that you would move along by increments based on time, that is one way seniority can work. In collective agreements seniority usually means the right to promotions based on length of time worked. But specifically with regard to pay, I never felt there would be a problem at all. When you look at a pay grid and the males are spread along it, if you fix up the problem of the job rate, which I personally have and which seems very technical for a lot of people, this legislation simply compares the job rate which is the highest. I am not quite sure what happens to all those people along the pay structure.

Ms. Gigantes: It does not say.

Ms. McDermott: It does not say. We had recommend in committee--it is not in our brief--that you could opt to adopt the entire pay structure of the male comparable. If you did use a nonjob evaluation specifically, some type of wage adjustment, that would be no problem. You simply opt for their structure and move the women along the male schedule in terms of seniority at the same rate. There would be no problem.

1040

Ms. Gigantes: When we get to a discussion in this committee and probably in the Legislature and in the public, certainly among business, on the whole question of merit, we are dealing with two different notions of what is involved here. Mr. Dean raises the trauma he would face as an employer or employee in a system where merit could not be recognized and says in answer to your responses: "What if there is no possibility for advancement? What if the employer cannot recognize it in that way?" It seems to me a very limited way of looking at job structures.

Even if you had six employees, surely there is a way of saying this is the position I want to fill. If somebody fills it at a higher level, in a sense, than his job description has called for, why does he not write a new job description and say, "If I find somebody of that quality, I will put him in that category, and if I find somebody of that quality with those skills, that effort and that responsibility displayed in my working conditions, then I will fill the job at that level"?

It seems to me there is just a whole inability of a lot of people, particularly people who have had small business experience and who know how valuable the way a job is done can be, which really requires more skill, effort, responsibility under the same working conditions.

Ms. McDermott: Let me give you an example of my concern with job rates. At some universities--these are unionized, certified bargaining units--you have six pay levels along one job. This is the same function; it is a clerical 2 position. Sometimes you move along simply by seniority; if you are there for three years, you move to the next pay step. Some of them stop half way or three quarters of the way and two or three job rates pick up on merit. The concern of those bargaining units is that with this definition of job rates, only the merit people are in the job rate and they would be affected by this. I think it is a huge flaw. It is not acknowledging the reality of wage programs all over the place. Many employers have wage increments that can be based on seniority moving through them or merit.

Again, those last three categories could be seen as a merit exemption. What about the women who never get to the last category, either by seniority, moving along--they have not been there the 15 or 10 years to get to the end rate--or by merit?

This legislation says the job rate means the highest rate of compensation for a job class. The definition of pay equity in section 5 says, "...the job rate for the female job class...is at least equal to...." We are focusing on the job rate. What about those empty job rate categories? You saw the Canadian Union of Public Employees pointed out at the Bill 105 hearings that they have jobs with eight levels and most of their people are along at the end. They are not in the job rate. What do they get?

Simply, the legislation could be amended to adopt the percentages similar to Bill 105, in fact, along the rates, the percentage increases or raise all the rates along the schedule.

Ms. Gigantes: Let me tell you one of the concerns I have, which is that the bulk of women who work in Ontario are not--

Mr. Chairman: This is by way of a question?



Ms. Gigantes: Yes.

Mr. Chairman: "You are not entering into debate?"

Ms. Gigantes: Oh no.

Mr. Chairman: Oh no, I would not think you would.

Ms. Gigantes: There may be debate, but let us see.

Most of them are not members of organized unions and are in quite vulnerable positions where they work for employers of fewer than 10 employees. In those positions, they will not have access to this legislation. I would like to see them have access to the legislation. We run into this whole enormous fear that we get from small businesses--we have had it many groups before us over the last week and a half--saying, "I have to be able to pay on merit." How do we deal with that?

I think you did not like my example of promoting and saying, "The job is going to be filled at a certain level," but I think in essence that is what happens in small businesses.

Ms. McDermott: Simply, the guidelines from the Pay Equity Commission could be--this is not NAC's position, but this is a solution--to structure your pay schedule so that the increase goes to each of the people along the pay schedule, so that someone on merit might move farther along the schedule but everyone would benefit from the remedial legislation. They would get percentage increases.

Ms. Gigantes: When you talk about eight people in a firm and you talk to an employer about pay schedules, he would go "Bah." I want to get rid of merit compensation plans, because I think it is going to have deleterious effects on anything we do around this legislation.

On the other hand, we are dealing with this enormous emotional and practical problem, which is that small business is coming and saying, "We have to have merit. We have to be able to pay by merit." That is the old favoritism game. I agree with you. It is the old argument that women are less meritorious than men; we all know that; and the work they do is less valuable than men's; we all know that.

Do you have any suggestions for us about how we could at least talk about why we want to get rid of this clause? We know why we want to get rid of clause 7(1)(c), but how can we help business people understand that, if we take it out of the legislation? I would like to take it out.

Ms. McDermott: I would like to take it out too, but there is something here that could help. It does not discriminate on the basis of gender. You do put the onus on the employees in the establishment of saying, "How come all the men have the merit and we do not?" It could be couched as a complaint that it is a system that discriminates on the basis on gender and that the men are getting more merit. This would require access to data on a colleague's pay, which is another problem.

Ms. Gigantes: It does not give great access for women in a firm of eight.

Ms. McDermott: Right.



Mr. Ward: I have been following the interchange and I get the feeling that the arguments you are making against a merit compensation plan apply regardless of the circumstance, regardless of the gender predominance or which gender. It is merit compensation plans that seems to be what you are arguing against. Is that correct?

Ms. McDermott: NAC's position is that we do not want to see merit in this legislation.

Mr. Ward: Even if it is free of gender bias?

Interjections.

Mr. Ward: That is specifically what the section mandates, that it has to be free of gender bias.

Ms. Cameron: I think the onus is on people defending merit to explain how it is not going to involve systemic discrimination.

Mr. Ward: Absolutely.

Ms. Cameron: It is just the experience that people have had already with merit systems; that is where the suspicion comes from, and the experience is very bad. It is just one large loophole for a continuation of systemic discrimination.

Mr. Ward: I would agree that clearly the section does place an onus on the employer to establish in a satisfactory fashion that his merit compensation plan is free of gender bias. Throughout the interchange here, I get the feeling that the argument is against merit compensation rather than a specific exemption that is designed to free employers of an obligation to provide pay equity. I do not think that is what the section does.

Ms. Gigantes: Could I ask the parliamentary assistant a further question on that point? When we look at section 7, we are looking at all work situations where there are over 10 employees. In work situations where there are between 10 and 100 employees, this legislation does not even provide for a plan. This legislation does not call upon employers to file plans with the Pay Equity Commission. There is no onus placed on employers to demonstrate that any merit system they have in place--

Mr. Ward: Surely there is in the complaint mechanism and the hearing in the tribunal.

Ms. Gigantes: If I am one of three women working in a firm with 15 people in it and I am doing clerical or office work, am I going to go off to the Pay Equity Commission? How am I going to know the salaries of people anyhow, unless I am the payroll clerk or the personnel clerk? I may not even see those; the manager-owner may just keep all that stuff locked in his top drawer. How am I ever going to know? What base do I have for a complaint in my view?

Do I feel secure enough of my economic position that I am going to go forward and make a complaint on a merit system, when I do not even know what a merit system is? The merit system may be the thing that is undermining my chance at equal pay and it may be the thing that makes the employer say: "I do not have to file a plan. As far as I can see, if I look over my payroll, I am paying people fairly." Where am I?

Mr. Ward: I have trouble even following what your question is.

Ms. Gigantes: If the employer thinks he can justify the way he is paying people on the basis of clause 7(1)(c), a merit compensation plan--

Mr. Ward: Free of gender bias.

Ms. Gigantes: That has to be tested, but who is going to test it?

Mr. Ward: Sure it has.

Ms. Gigantes: Am I going to test it?

Mr. Polsinelli: It seems we are getting into clause-by-clause debate, which I would dearly love to participate in.

Ms. Gigantes: That is an important point in this presentation.

Mr. Chairman: This is not the time or the place, as Mr. Polsinelli very correctly points out. Is there anything further by way of a question that any member of the committee has? If not, I will thank the delegation for coming before us. We appreciate your views and your brief. We will take those into account, as we will the others that we have heard to date, when we get into the clause-by-clause debate.

I am going to call a brief break for about 10 minutes. Then up next we have the Canadian Manufacturers' Association.

The committee recessed at 10:54 a.m.

1105

Mr. Chairman: We have the Canadian Manufacturers' Association. We welcome the delegation to our morning deliberations. We are pleased to see you here and we look forward to hearing your presentation. There will undoubtedly be questions from members of the committee following your comments. Hans Kluge is one of the gentlemen who is here representing the association. Perhaps he or one of the spokesmen may wish to introduce the other members of the delegation. We welcome you and you can carry on from here.

#### CANADIAN MANUFACTURERS' ASSOCIATION

Mr. Kluge: It is a pleasure to be here. I would like to introduce the committee to you. On my immediate left is Ms. Kathryn Filsinger, the industrial relations adviser for the Canadian Manufacturers' Association. On my immediate right is Frank Miller, a member of the CMA subcommittee on pay equity and an expert on compensation. He represents a medium-sized company. On my extreme left is John Keenan, director of labour relations for a large company. He is also a member of the CMA labour relations committee. My name is Hans Kluge. I am the present chairman of the Ontario division of the CMA. I am an employer of a medium-sized company.

In lieu of introduction, I would like to preamble our brief the following way: The Ontario division of the Canadian Manufacturers' Association firmly supports the goals of employment equity and eliminating pay discrimination that is based on gender. However, as stated in CMA's response to the green paper, we do not believe pay equity legislation is an appropriate

way of dealing with these issues. The association believes serious questions about the effectiveness, fairness and impact of such legislation remain unanswered.

I highlight seven of them. The first is the question of what proportion of the wage gap is addressable by pay equity legislation. Statistics show that only about three per cent, and certainly less than five per cent, are affected.

2. The impact of the legislation will be quite arbitrary, depending solely on the profile of each company's work force.

3. How can the relative job value of totally different jobs be objectively established?

4. What are the implications of restricting labour market forces in determining what a job is worth?

5. Under the proactive model, the employer is assumed guilty until proven innocent.

6. What will the impact of a one per cent annual wage adjustment on international competitiveness and employment opportunities in the manufacturing sector mean?

7. This legislation does nothing to provide women with better access to employment opportunities.

The CMA continues to believe that the most effective way to promote lasting equality within the province's work place is to take measures that encourage job mobility. Initiatives that focus on removing sex bias in social and educational processes, training women returning to the labour force and encouraging and supporting women to do nontraditional work will directly address the occupational segregation problem at which Bill 154 is aimed. Such measures would facilitate and accelerate a healthy process, which is already gaining momentum.

#### 1110

However, the Ontario government appears committed to implementing pay equity legislation in Ontario's private sector. Therefore, despite these serious concerns, this submission focuses on the significant implementation issues raised in Bill 154. CMA's key recommendations include the following:

1. On the scope of job comparisons, the CMA strongly recommends that subsection 5(5) of the bill, which allows for cross-bargaining unit comparisons and comparisons between union and non-union employees, be deleted.

2. The CMA strongly recommends a definition of "establishment" that has both geographic and functional elements.

3. On the phase-in period, the CMA strongly supports the staged process of implementation found in Bill 154.

4. Several of the allowable exclusions found in section 7 of Bill 154 need to be clarified and expanded upon.



5. On the definition of "female job class," both female and male job classes should be defined as job classes in which at least 70 per cent of the members are female or male respectively.

6. "Job rate" should be defined as the rate attainable by the majority of the employees, that is, those employees with sufficient tenure in the position, performing at a fully satisfactory level. This rate is sometimes referred to as the job rate, mid-point, standard or control point in a merit progression system, and it may also be the maximum of the range where automatic progression over time is the system in force.

Our submission contains many other recommendations which we will be pleased to discuss with you at any time, particularly today. We have highlighted these recommendations because they affect broad policy concerns.

Before I open it for questions, I would like to mention that we are representing not necessarily the small manufacturers, but all manufacturers in Ontario. We also would like to stress the point that the wealth-producing segment of the economy is the manufacturing, and we are representing that segment here.

We are open to any questions.

Mr. Chairman: Since the bill addresses the question of numbers of employees in terms of the particular operation being brought in under the context of this bill, could you give us your definition of small, medium and large manufacturers? Different numbers are used for that purpose at the provincial and federal levels, and you mentioned it in your introduction of some of the delegation. In your view, how many employees would there be in each category, and what does the Canadian Manufacturers' Association use as a benchmark?

Ms. Filsinger: I will speak to that. Internally, we use one to 99 employees as a smaller manufacturer; mid-size would probably be 100 to 500; and 500 and over would be a large manufacturer. Seventy-five per cent of our members have under 100 employees.

Mr. Chairman: Are there any further comments on the part of the delegation? If not, I will move on to questions.

Ms. Gigantes: Thank you for your presentation and your brief. I have not had time to read through a complete summary of your points in the brief but I will take up questions, if I may, on two points you mentioned in your verbal presentation.

The first point has to do with the question of establishment, which you relate to the question of employer, in definitional terms. We hear from you, as we have heard from other employer groups, that we should be looking to a functional definition, if you want to speak loosely, of "employer" and "establishment."

Could you give us some examples of where you think a change in the definition would be helpful or some of the problems you see with the current definition? Then I would like to ask a bit more about the intent.

Mr. Miller: On page 4 of our brief, we talk about the issues behind our recommendation for a definition of "establishment." Part of it is that within a company of a larger size one could have many different streams or

areas within a business that quite often compete in very different markets and look at different times for different qualifications and skills mixes to fill the positions in their businesses. Conversely, to be competitive within those businesses, they find their pay policy--not necessarily what they are paying individual people but their general policy towards setting pay lines within that respective business--is different from the rest of that organization.

Ms. Gigantes: Can you give us a concrete example? You do not have to name a firm.

Mr. Miller: Sure. Within a chemical area, a company that has a broad chemical side might also have a division in the explosives business. Clearly, the refinery part of the chemical business is quite distinct from the explosives side and looking for different mixes of employees. Certainly, the companies they deal with will be quite different.

Ms. Gigantes: In your terms, for such an example, what is the problem with the definition in the bill?

Mr. Miller: We find it is a bit too broad. If we are really looking at gender discrimination, we want to find whether that discrimination really exists within a like group of employees. In that like group of employees are those who are competing and who are part of the same business. Where there are distinct businesses, because of the different natures of the those businesses, we find there is too much of a variance to compare.

Ms. Gigantes: If I am an owner of two businesses within the same geographic region and I am asked as an employer to make a comparison under this bill, why should I be able to avoid a comparison if one of my businesses has 75 per cent female employees doing certain kinds of jobs at certain rates, whereas in the other business, most of the employees are male? Why should I, as the employer, be able to discriminate between different people I employ? Why should there not be at least a comparison available to my female employees under this legislation?

Mr. Miller: I guess the question, which gets back to the basic issue of determining value, is whether you are really comparing the same things? If they are doing the same work and if they are in the same business, I have no problem with that. But where you are comparing apples to oranges, and there is no yardstick to compare such indifferent types of responsibilities, albeit different responsibilities--

Ms. Gigantes: When I go out to buy food, I do compare apples and oranges. I look at the price and I decide, partly on the price, what my family is going to eat this week. But as a shopper, I do go out and compare apples and oranges in terms of what my inclinations are, what the needs of the family are, what I think the needs of the family are, how much the fruit is costing this week and so on. What is so difficult about an employer doing that? Why should it not be done?

I will tell you what worries me. We are being told that now is the time we are going to eliminate discrimination between men and women in the work place or by one employer. We know that exists and we want to address it. On the other hand, the employers come to us and tell us, "The trouble is that there are different functions for which we employ people." We know there are different functions for which employers employ people; they employ women for women's work and men for men's work. Unless we can have a comparison of the functions and the pay rates associated with the value of the work within those



functions, then we are not going to get out of the discrimination. The function in itself becomes another way of saying some discrimination has to exist and continue to exist.

Mr. Kluge: One of the issues, which has been discussed at length, is market forces. Let us stay with the oranges and apples. If there is a frost in Florida, the price of the oranges will go up. Does the price of the apples have to go up immediately?

Ms. Gigantes: It will, as you know, because people will turn to apples. That does not happen sometimes in the labour market, as you are aware.

Mr. Kluge: That is the market forces, I suggest to you.

Ms. Gigantes: No. There are higher rates of unemployment for women, but there are fewer categories of jobs open to women, normally speaking. Employers have tended--and you addressed this partly in your brief--not to look upon women as people to be hired first in terms of their skills and so on. When we talk about employment equity, we also include within that package affirmative action in hiring, training and promotion.

Mr. Kluge: We have no difficulty with employment equity; we have a difficulty with pay equity. Employment equity--

Ms. Gigantes: But if you insist on keeping--

Mr. Kluge: Excuse me. Employment equity--

Mr. Chairman: Will you allow the speaker to respond, Ms. Gigantes? You are entering into debate continually.

Ms. Gigantes: It is my way of asking questions.

Mr. Chairman: I understand that, and I am allowing you a little flexibility, but the gentleman was attempting to respond to your question. I would like to give him the floor.

Mr. Kluge: We have no quarrels with employment equity; in fact, we have come out with a paper on employment equity. I do not think there is any discrimination situation. What we are concerned about in what is called pay equity, which in a sense is a very difficult thing to understand for people outside this room because they mix up employment equity with pay equity, is the fact that dissimilar jobs are to be compared by a value system that is arbitrary. The only thing that is not arbitrary is market forces. Market forces depend on what is the value and the payment against that value. That is not discrimination; that is a fact of life.

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Ms. Gigantes: We have had similar kinds of functional definitions and functional restrictions on labour and on pay rates before in history. For example, it has been done in the deep south for long periods of time over colour of skin. There was a functional definition of the type of labour that was undertaken by colour of skin. There was a functional definition of the relationship to the employer by colour of skin. There was a functional definition of rates of pay dependent on colour of skin. There were justifications built up around that, including the fact that it was efficient; it allowed the south to compete. All those things were true. It made businessmen in the south richer; there is no doubt about that.



When we talk about trying to get over past habits of discrimination--and I think you accept that such discrimination has existed when you talk about the need for employment equity--part of the question we confront deals with the matter of equal pay for work of equal value compared on the basis of skill, effort, responsibility and working conditions under which a job is performed. It also very much relates to a comparison of the functions, because you cannot compare a job and the way an employer pays for jobs unless you are willing to make a cross-functional comparison.

Mr. Kluge: That is your statement. I did not hear a question. Would you like to ask me a question?

Ms. Gigantes: Is that not true?

Ms. Filsinger: If I could just go back to your original question, perhaps I could clarify that. We are saying when there is common ownership, when a large corporation is a single owner and has two totally different divisions in two different marketplaces--they are competing in different markets and they have different profit margins--a lot of cases can be demonstrated where there is no element of discrimination. There may be some dominant jobs. Let us say you have one in the explosives division and one in the chemicals division. If you allow the clericals in the less profitable area to compare with another division, you are really not comparing comparables. You are not getting at gender-based discrimination; you are getting at the realities of those particular marketplaces, because they are addressing two different marketplaces. If you are selling shoes, you are sure in a different market than if you are selling deluxe items, horse saddles or whatever. Do you understand what I am saying?

Ms. Gigantes: I understand what you are saying. Do you understand what I am saying? If I am an employer who manufactures chemicals on one hand and explosives on the other, and I have all-male clerical staff in the chemical plant and all-female clerical staff in the explosives plant, I would be interested to know--

Ms. Filsinger: That is equal pay for equal work, and we are not discussing that.

Ms. Gigantes: No, it is not, because you are carrying out two different functions--

Ms. Filsinger: I am sorry; I thought you said they were both clerical.

Ms. Gigantes: They are both clerical, but they may be providing quite different kinds of services as clerks.

Mr. Dean: Then they are not comparable.

Ms. Gigantes: Yes, they can be comparable.

Mr. Dean: Not if they are providing different services.

Ms. Gigantes: Of course. That is the whole notion of what comparable value is about.

Mr. Dean: I do not get my orange juice from apples.

Ms. Gigantes: It has to do with the skill, effort, responsibility and working conditions of a position.

Ms. Filsinger: Probably the more realistic comparison is if you have female clericals in the explosives division and male plant workers in the chemical division. If you allow a comparison between those dissimilar jobs--and let us say they are comparable by whatever system you choose to use--the pay lines are different because you are in different markets but not for reasons of undervaluation. Maybe males in that lower-paid division are equally underpaid. You are not ferreting out market discrimination; you are ferreting out--

Ms. Gigantes: Let me ask you this then. If we define things the way you are suggesting, what is to prevent an employer from dividing up every aspect of a current establishment into different functional corporations so there will be no comparison between the office work and the work in the paint shop? We had that suggested to us last week by one employer representative.

Mr. Kluge: Surely this is not the aim of the legislation. If that is the case, there will be even more discrimination about a certain segment of employees, whether it is female or nonfemale. If you have that kind of segmentation, we will run into even bigger trouble than we have now.

Ms. Gigantes: Do you see the way around that? I am asking you, would a way around that be to say that an employer, no matter what the functional definition of the different markets served, should be comparing the value of the work done by employees? You may find there are some comparisons across functional lines; you may find there are very few or none.

Mr. Miller: When you are comparing value of work, you want to compare the value of work within a similar organization. That similar organization in the particular example we are depicting is that type of organization where you can get a clear measure of that value. That clear value does not exist in different types of operations that manage their whole salary programs and classifications differently. That is the gist of why we would back this type of definition of establishment.

Ms. Filsinger: Without a functional element, all you are going to do is cause a corporation to either sell off or wind up its less profitable units, because at the new pay lines it is not competitive in the marketplace it is dealing with.

Ms. Gigantes: I suppose that depends on what the marketplace is. You would not be able to say that a priori. You would have to take a look at that as an employer. It seems to me the cases you are raising must affect firms that probably have more than 500 employees mostly, because you are talking about corporations that have extremely different functions and marketplaces to serve within the corporate context.

Mr. Kluge: That is not the case. I am employing 180 people and it would affect me in two plants.

Ms. Gigantes: Could you tell us how?

Mr. Kluge: Yes. I will have to have dissimilar jobs evaluated by a third party--it is as simple as that--regardless of market forces, regardless of the hiring or the labour marketplace in two locations.



Ms. Gigantes: How do you think it would affect your pay bill?

Mr. Kluge: One of the issues that is before us is that although it has been mentioned earlier that the cost will be horrendous, nobody really knows what the cost is. We are not saying it is going to cost billions. We really do not know. Nobody knows. You yourself have mentioned it is going to cost millions in the public sector. Those millions have to be raised somewhere; they are going to be raised from individual income tax as well as corporate tax.

Ms. Gigantes: Do you think it will affect your payroll significantly?

Mr. Kluge: I will also have to provide up to one per cent of my total wage costs to bring that into place. I cannot afford that. Many marginal companies will be even less in a position to afford that. It has nothing to do with the number of employees. Whether it is 100 or 500, it is an extra cost, whatever the cost is. I am not going to put dollars against it.

Ms. Gigantes: Could I--

Mr. Chairman: Could we move on to other members?

Ms. Gigantes: Yes; thank you.

Mr. Polsinelli: Mr. Kluge, I would like to thank you for your presentation. I am sure all members of the committee will take some time later to review it.

I have listened to your verbal presentation and I have read your introduction. In first line of your introduction, you say the CMA supports employment equity and supports eliminating pay discrimination that is based on gender. The preamble of the bill clearly sets out that the purpose is to redress gender discrimination. Without going into anything else, would it be fair to say that we would like to achieve the same objective, but there is a slight difference of opinion as to the means of achieving that objective?

Mr. Kluge: The simple answer is yes.

Mr. Polsinelli: That being said, in your introduction you indicate that the way you would like to achieve that objective is by encouraging job mobility and by eliminating sex bias in the educational process so that women would be encouraged to move to nontraditional work. Is that generally an indication of what you are trying to tell us?

Mr. Kluge: That is correct.

Ms. Filsinger: That women are concentrated in a small number of jobs. Let us attack that problem directly.

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Mr. Polsinelli: Yes. We are all familiar with the Canadian census data of 500 job/occupations and women being stuck in about 20 of them.

Yesterday we had a person before us, a female payroll clerk in a hospital. Her job requires one to have about a grade 12 education, a couple of years of community college and a number of years of experience. She also knows there is a position of porter in her hospital, for which they would like



a grade 12 education, but they will accept grade 10 and basically very few other requirements; that porter earns a dollar an hour more than she does.

Assuming this woman likes her job and does not want to become a porter, should there not be some way of determining the relative worth of both jobs and determining whether they should receive some type of comparable pay, or should we just accept that because one is a payroll clerk and the market is only paying X amount of dollars, irrespective of how much her position may be worth? If she wants to make an extra dollar an hour, she would have to change and become a porter.

Ms. Filsinger: I am interested in whether both those positions are unionized within the same union. When I hear examples given in the public service, often they are covered by the same union. What strikes me is why those perceived inequities, which is what they sound like, have not been negotiated out. When it is a unionized position, it is less subject to the market forces. I do not know why that would be.

I think we are playing with fire when we say a third person can come in and say what those jobs should be worth. If there is a problem with that job evaluation system, with the way negotiations have gone, fine, but I think what we are putting in place is going to have tremendous repercussions. While you can give one story like that, there can be other stories.

Mr. Polsinelli: I would rather not get into the details of this legislation or perhaps the details of any proposal you may have but rather sort of in the conceptual or philosophical sense. If we both want to achieve the same thing, if we both want to eliminate gender-based discrimination, and we have agreed on that, then essentially what we are discussing is the means to achieve that. The government has chosen to introduce Bill 154, which compares job classes. If there is a difference in pay between two comparable jobs, essentially the explanation is that it is gender-based.

Now if you are saying this is inappropriate and that what should happen is that women should be encouraged to go into nontraditional jobs, which means that the payroll clerk, if she wants an extra dollar an hour, should become a porter, my question to you is, should there not also be some way of determining whether certain jobs, which have been traditionally called female jobs, are worth as much as other jobs, which have traditionally been called male jobs?

If we do not want to talk about the payroll clerk and the porter, we can talk about the executive assistant to the president of a corporation and the parking lot attendant in a nonunionized establishment, where the parking lot attendant with a grade 10 education and a driver's licence is earning less money than the executive assistant or the executive secretary to a president who runs the company--

Ms. Filsinger: Earning more money.

Mr. Polsinelli: That is right. I am sorry. I may have--

Ms. Filsinger: Incidentally, I think in the private sector you would not find the parking lot attendants making as much as they do in the public sector. I think that is an anomaly that exists primarily in the public sector.

Mr. Polsinelli: You are not telling me that type of situation does not exist.

Ms. Filsinger: I am just making a comment that relatively recently there was a strike of parking lot attendants in the private sector, and I was interested to hear that they make about half of what is paid in the public sector. It is difficult to make those comparisons when one is a unionized position perhaps in the public sector and the other is not. But assuming that is the case, if we relieve some of the overcrowding in certain female jobs, I mean if 40 per cent of all men were truck drivers, you would find the wages of truck drivers being very much depressed.

Part of the problem with so many women who returned from working at home, let us say, in the 1970s--two million women entered the Canadian labour market since 1970--is that while a lot were going into nontraditional jobs, a lot were going into the clerical-type jobs. If we had a little bit of breathing space to allow that time to filter out, I think we would find fewer of these inequities. Also, as more awareness comes through--

Mr. Polsinelli: Sorry. Can I just stop you for a second? Are you saying that the inequities exist because there are too many women going into a particular job group?

Ms. Filsinger: I think that if you put an advertisement in for a secretary and you were not getting many applications and you found it difficult to get them, the wages do go up. I know that for a fact.

Mr. Polsinelli: I am interested in the comment you made earlier. If 40 per cent of the truck drivers were men, you would say that the--

Ms. Filsinger: No. We have a problem with overcrowding in certain female occupations. We are saying let us deal with that directly. If you did not have so many women concentrated in a small number of occupations, you would not have the same amount of overcrowding. I am not saying it is that simple or that is the sole answer, but there is an element there that is not being addressed.

Mr. Kluge: Let me give you an example. I have a shipper who is a male. I also have a warehouse helper who is a female. That female warehouse helper wants to drive the truck. She drives the truck and she gets the rate of the truck driver or shipper. The discrimination does exist, but we are comparing them in equal work for equal pay.

Mr. Polsinelli: We all know that has been law for over two years.

Mr. Kluge: If you talk employment equity, then I think we are addressing a different subject here. In fact, we would be very happy to make available to the committee an extremely well prepared paper on employment equity. How do you measure up? I think that is an issue that we as manufacturers are addressing.

Mr. Polsinelli: Mr. Kluge, I understand what you are saying. we agree on the principle that any gender-based discrimination should be eliminated. You want to address that aspect of it, but you are saying address that by telling the woman to go find a higher-paying, nontraditional job. I believe there are certain jobs that are undervalued because they are predominantly occupied by women. The fact that we can tell some of these women to move on and find another line of work will not address the problem that all those women who decide to stay in that job will still have. The work will still be undervalued because it is in a predominantly female-occupied profession or job.



Mr. Keenan: Could I address this? I think you have isolated what essentially our association believes is the flaw in the whole thesis upon which this legislation is based. There is a presumption that because in the case that you have cited there is \$1 an hour difference, the \$1 an hour rests because in the one job the incumbent is a woman and in the other job the incumbent is a man. Surely those jobs, if they were objectively evaluated by a third party, would measure up at least equal.

I think that misses out an intrinsic factor of value that cannot be measured, which is the subjective factor in that the individual, knowing the choices that are presented, to make more money, still chooses for subjective and personal reasons. The same thing happens between men.

I can cite you a very similar example. We have a plant in my company--not in this province--in which there are two separate bargaining units represented by the same union. In both bargaining units there are job evaluation programs. Jobs are evaluated. The jobs are identifiable and there is cross-mobility between bargaining units.

I know there are jobs that are evaluated at 100 points, just to take an example, in the one bargaining unit that are paid \$1 an hour more than jobs evaluated at 100 points in the other bargaining unit. Individuals can move between bargaining units--men--and they choose not to because they put an intrinsic value on being in the one bargaining unit. They prefer something that is not able to be measured. In this particular case, it is the regularity of hours, but those things are very difficult to measure.

I suggest to you that in the kinds of examples that have continually surfaced, such as the parking lot attendants and the individuals working in offices, there is a factor in there that even under the best of circumstances people will make those choices. If they were evaluated so that they were paid the same, one adds cost into the system, costs that manufacturers feel they just cannot sustain and they are costs that people all across the economy are willing to accept because they prefer to make those certain choices.

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Mr. Polsinelli: I accept what you are saying, that certain individuals will choose one line of work over another line of work irrespective of the pay because they happen to like--

Ms. Gigantes: We are talking about shift workers compared to regular hours.

Mr. Polsinelli: I am saying I can accept that some people will want to be doctors, some people want to be lawyers, some will people want to be crane operators, some people will want to be payroll clerks, because they happen to like that kind of work and even if they were offered more money someplace else, they would not take it. That is a subjective element in each one of us, where we choose the line of work we go into.

Mr. Miller: We are not here to talk about philosophy. We are here to talk about concrete recommendations as to how this bill should be implemented and should be read into legislation. That is what we all hope to address today.

Mr. Chairman: We have a supplementary from Ms. Caplan.

Ms. Caplan: Yes, a very short supplementary. In the example you used about the two bargaining units, I did want to make the point that the working



conditions application would apply and that is a very important part of this bill which deals with working conditions. Often that is one of the reasons why you will have a difference.

I just want to take a moment to laud the efforts of the Canadian Manufacturers' Association in its support of employment equity and I am very aware of the study and the work that you did. It has gone a great way to educate your membership into the reality of the fact that a problem does exist. I think what we are hearing, particularly from the leadership of your organization and others, is that it would like to work with us to find ways of redressing these problems and to making sure, since there is so much misunderstanding of what it is that we really are talking about, that we are down to now working out the details.

I want to thank you personally for your submission and just let you know that I think we are really able to work together in finding the solutions. I think some of the concerns that you have about this bill are unfounded and, in fact, when your membership begin to do their pay equity plans, their employment equity plans, the data they collect and the examples they see of gender discrimination will be corrected within the time frames allowed within this bill, so that there will be minimal impact on them because they really want to be good employers, and they will see from the data that they collect under their employment equity proposals, which you have assisted them with, that, in fact, many of the fears which you have expressed today are really unfounded.

Mr. Kluge: Unfounded, you say?

Ms. Caplan: Unfounded.

Mr. Kluge: Can you be more specific than that?

Ms. Caplan: Often I think employers are unaware, because there is systemic discrimination as opposed to overt discrimination. We have heard many employers come before us and say: "We are good employers. We want to be good employers." Because they have not looked at their establishments and they have not looked at their work forces, when they see some of the examples, such as those stated by Mr. Polsinelli or others before this committee, within their own establishment where they cannot account for why we are paying this job \$1 an hour less than that job, just from the collection of the data, that they will begin on their own to correct that which they will recognize as systemic discrimination. I think you have done a great service to your own industry in helping to heighten their awareness that the problem does exist.

Mr. Miller: I think in some of our recommendations that we are making to correct whatever wrongs may exist within the work place--I think we are all here for the same common objective and we stated that in our philosophy statement--we start to take the actual articles into consideration, such as what I would take to mean as a total miscomprehension of what a job rate really is and how it is applied within the act, and to apply that within getting equity within your work place. We are looking at--

Ms. Caplan: I can--

Mr. Miller: Can I just finish please?

Ms. Caplan: Yes, of course.

Mr. Miller: We are looking at not only that issue, but looking at what compensation is; what your establishment is. These are all very crucial items to employers of all sizes. When we get a clear indication as to some flexibility in terms of those definitions to meet different types of needs, to reflect what true merit-based systems are as opposed to true progression-type systems. We need to see that type of reflection in the act itself.

Ms. Caplan: Let me assure you that is the purpose of these hearings, to hear the concerns and the representations made, and as we go through the bill clause by clause, I hope we will be able to adjust many of those concerns as possible.

Mr. Baetz: I would like to get back to your figure of only three per cent. You think only about three per cent of the total portion of the wage gap is addressable by pay equity legislation. What does that translate to in actual figures, roughly?

Ms. Filsinger: Do you mean dollar amounts?

Mr. Baetz: No, in people; roughly.

Ms. Filsinger: I am sorry. I do not know.

Mr. Baetz: You say three per cent is--

Ms. Caplan: The wage gap.

Mr. Baetz: --the wage gap. There is a gender wage gap out there but you say only about three per cent of it--

Ms. Filsinger: The unexplained portion of the wage gap under the green paper figures was about 10 per cent or 15 per cent or whatever. I have an article here from Professor Paul Weiler in a recent Harvard Law Review where he goes into the wage gap and states that whatever impact there is from occupational segregation is dwarfed by the impact of segregation by industry, that women tend to be in lower-paying industries such as textiles or service or sales and the high-paying industries such as mining and construction tend to be almost exclusively male. So there is a whole element of the residual pay gap that we do not believe has really been addressed. We think that even what pay equity could address potentially if it worked perfectly would be relatively minor compared to the costs of implementing your job descriptions and your job evaluation; there is complexity as well as potential inaccuracy though.

Mr. Baetz: I guess my question then is, if this legislation does not address itself to that percentage, then how do you feel the solution can be found? What is the solution?

Mr. Miller: Is it going after three per cent or is it going after 97 per cent?

Ms. Gigantes: Three per cent of the total Ontario payroll is a lot of dough, and that is what we are talking about. We are talking about 15 per cent of Ontario's payroll. We are talking about 63 cents on the Ontario dollar, and three per cent of the total payroll of Ontario is not a laughable matter. It means a lot in the pockets of women.

Mr. Baetz: I guess I will try once more. If you say this proposed legislation will not address that--



Ms. Filsinger: The vast majority of the wage gap.

Mr. Baetz: --then how do you think the problem will be totally mitigated? How will the problem go away, whatever there is left of the problem, in your view? How will it be solved?

Ms. Filsinger: I think we have addressed that briefly up to this point, talking in terms of employment equity. I know in the 1970s there was a tremendous number of women who came into the labour force who previously, for social norm reasons, had been out raising children or whatever. That is filtering through and I think the wage gap figures--Ms. Gigantes might disagree with me--if you look at it on an hourly basis, you are looking at a change in the wage gap from the ratio being 72 per cent in 1980 to 78 per cent in 1982. I think there are rectifications taking place and this is proposed as a fairly quick fix that might break more than it fixes.

Mr. Baetz: You are saying that without this legislation the problem will slowly go away. Is that what you are saying?

Mr. Kluge: Eventually, yes.

Ms. Filsinger: I think it needs employment equity efforts. I strongly believe that.

Mr. Baetz: It still needs employment equity efforts.

Mr. Kluge: Employment equity, please, not the pay equity issue.

Mr. Chairman: I have a supplementary, Mr. Baetz, and I will give you the floor back. Mr. Ward wants to get on the floor with a supplementary at this point.

Mr. Ward: I want to get back to the numbers that you used that only three per cent of the wage gap is being addressed by this legislation. Is that correct?

Ms. Filsinger: There are many studies and you can pick whatever you want, but I think--

Mr. Ward: That is the point.

Ms. Filsinger: --it is widely agreed that the majority of the gap would not even be addressable by pay equity legislation. I think the green paper says that, and Professor Weiler's study said that even if a comparable work strategy were entirely successful in eliminating the suspected remainder, the total gender gap in earnings would drop by only two or three percentage points. You may have other figures, but I think it is widely acknowledged that the significant majority of the gap is not even going to be addressed.

Mr. Ward: What do you determine as significant? Even if you go through the green paper, which I think tried its level best to canvass all the studies and all the material that was out there, it established that pay equity would address around 25 per cent of the wage gap.

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Ms. Filsinger: Was that not the unexplained portion of the gap?



Mr. Ward: No, I do not believe it was the unexplained portion. As a matter of fact, a reference was made earlier--last week, I think--by the Canadian Federation of Independent Business that five per cent of the gap was attributable to gender discrimination. The reference in the green paper to that was wage discrimination, which is already illegal today under equal pay for equal work legislation. All of a sudden that is extrapolated from the report and all of a sudden the wage gap that is being addressed by this legislation is five per cent. That is not what the study says at all.

Ms. Filsinger: No. I appreciate that, and that is not what I am referring to.

Mr. Ward: We can take every study in the world and use it as we see fit. All of what you say in terms of employment equity and training and education is true, but does that mean that you ignore the 25 to 30 per cent, or whatever it is, of the wage gap that is attributable to gender discrimination? In all the things you talk about, you do not address the problem of the busboy and the waitress being paid at different levels. You do not address the problem of pay differences between the clerk and the gardener working in a municipality. It does exist. Just because this legislation by itself does not address all the problems in terms of the wage gap, does that mean that you do not proceed?

Ms. Filsinger: I guess it is a cost-benefit at this point. If you do say there is an unexplained portion of the wage gap, the question of balancing what is unexplained and what is even addressable by the legislation versus the actual costs and disruption of the proposal, then we cannot quite figure out why the government is proceeding with pay equity before addressing employment equity, which I think is far more effective.

Mr. Ward: Frankly, I think you do it all.

Mr. Kluge: You do it at a price--

Mr. Ward: We recognize that.

Mr. Kluge: --and perhaps that price may become competitive.

Are we in Ontario going to stay competitive or are we going to become noncompetitive? That does not discriminate here, and I am not saying that we discriminate because we want to make profits on the backs of women. That really is not the issue. The issue is whether or not we as a province can afford to go into a proactive kind of legislation that imposes on us a third party telling me what my values of jobs are going to be. If you asked me that question simply without gaps of three or 15 per cent, I would say to you it will make me less competitive.

Mr. Ward: I do not think we disagree that there is a price to pay.

Mr. Kluge: That is right.

Mr. Ward: By the same token, I think the legislation and the whole process looks at all of those issues of remaining competitive, remaining with a strong and viable economy and addressing a very serious problem of gender discrimination. I really do not believe that has been ignored.

Mr. Kluge: Therefore, the briefs which we have given you address specific points.

Mr. Ward: And they are helpful.

Mr. Kluge: The first two are increasingly more difficult to handle, and that is the comparison of nonunion to union and the comparison of the definition of an establishment in geographic and functional terms. These are specific issues and they will have to be wrestled with. You are forcing me to become less competitive.

Mr. Ward: You are right in that they are issues that we will have to wrestle with.

Mr. Kluge: That is why I am here.

Mr. Ward: But I do not go beyond that, because I do not necessarily agree with the suggested solutions.

Mr. Chairman: Mr. Ward, I have to move on. Mr. Charlton has been waiting with a great degree of patience. I now give him the floor.

Mr. Charlton: I would like to go back to Mr. Kluge and his comments about establishment and geographic and functional elements. You mentioned that you have two plants and that, in your opinion, this legislation is going dramatically to affect your operation of those two plants. Are the wage levels you pay substantially different in the two plants?

Mr. Kluge: Yes.

Mr. Charlton: Why are they substantially different?

Mr. Kluge: Because marketplaces are different.

Mr. Charlton: Is one of the plants predominantly women and one of them predominantly men?

Mr. Kluge: No, equal.

Mr. Charlton: Is it the level of skill that you require of your employees that makes the difference?

Mr. Kluge: No. It is the labour market.

Mr. Charlton: If neither of the plants is dominated by women, how is this legislation going to affect your operation? What is it that you are running away from here? Is it that you do not want the employees in the two plants to know their wages are different? If neither of them is predominately female, how is this legislation going to affect your operation?

Mr. Chairman: May I ask a supplementary before you respond?

Are the two plants that we are talking about hypothetically, which are involved in entirely different activities, based on what you have said, faced with different international competitive forces? Are they exporting plants? Are the segments of the market historically paid at different rates? When you talk about the difficulty of cross-references for comparative purposes, is that the reason you do not want to cross-reference? I want to add that as a supplementary to Mr. Charlton's comment?

Ms. Gigantes: In answer to Mr. Charlton's question.

Mr. Chairman: You can interpret it if you like, Ms. Gigantes, to be that way.

Ms. Gigantes: I certainly shall.

Mr. Chairman: I asked it by way of a supplementary.

Mr. Charlton: The important question is, how is this legislation going to affect your two plants if neither of them is predominantly female? This legislation is not going to change the existing pay structure in those two plants unless there is some way that it fits into this legislation.

Ms. Filsinger: On a point of clarification: You seem to be assuming that the legislation applies only if you have a whole plant that is predominantly male or predominantly female. Does it not go by job class?

Ms. Gigantes: That is right.

Ms. Filsinger: It goes by predominated job class.

Mr. Charlton: Sure, but when you do the comparison between two plants and you can see that the male wages in one plant as well as the female wages in that plant are lower, there is going to be no raising of the female wages. You are going to end up comparing them to the male wages in the plant where they work, because it is going to become clearer that the two compensation systems are not gender-biased. One is lower for reasons other than gender bias.

Mr. Chairman: You have a question and I know you are waiting for a response.

Mr. Kluge: Whatever. There are questions and answers being given,  
Mr. Chairman.

Mr. Chairman: Could you respond?

Mr. Kluge: I would be happy to. Mr. Charlton, the two plants I am referring to have two different operations.

Mr. Charlton: I understand that.

Mr. Kluge: They are in two different physical locations in Ontario.

Mr. Charlton: You said that, yes.

Mr. Kluge: The labour relations--

Mr. Chairman: Mr. Charlton, please. Could you allow the gentleman to reply? I do not think it is necessary to interrupt.

Mr. Charlton: I am waiting for him to answer the question. He is going over what he went over before.

Mr. Chairman: I know, but I think he should have every opportunity to respond to you. I allowed you to go forward with a series of comments along with questions. I want to allow our invited guests the same opportunity. Try to restrain yourself.

Mr. Charlton: I am waiting.

Mr. Chairman: I know it is difficult. Please go ahead.



Mr. Kluge: The jobs are dissimilar. If I as a company fall under the legislation, I will have to compare dissimilar jobs, female and male.

Mr. Charlton: You have not answered the question about how you are going to fall under this legislation?

Mr. Kluge: I have a plant with 170 employees, of which one division is someplace else where I pay a lower rate.

Mr. Charlton: How are those two plants, based on what you have told me, going to fall under this legislation?

Mr. Kluge: I have two dissimilar jobs to compare and somebody, a third party, is going to tell me what the value is going to be.

Mr. Charlton: You have a situation where you have two plants. One has a lower set of wage scales right across the board. That is what you have told me. Even if you do the comparison under this legislation, if in one plant the males and the females are paid lower than the males and the females in the other plant, then the pay practices will be shown not to be gender-biased. Where are you going to get caught under this legislation?

Ms. Filsinger: If those two plants are defined as being the same establishment because they are in the same geographic location, generally speaking, then they are one establishment and you can compare those two plants. I would be very relieved if your interpretation was correct, Mr. Charlton.

Ms. Gigantes: You would be comparing with the closest male comparable job. I really think your fear is unfounded.

Mr. Kluge: I am sorry--

Mr. Chairman: As a committee, we are going to spend a fair amount of time on the very point that you have raised. I think you have raised some justifiable concerns, if I can interpret those from the chairman's position. We will look at that very carefully.

Ms. Gigantes: Could I just make one item clear, because I am not sure I understood it.

Mr. Kluge, are your two plants in different geographic divisions as defined under existing Bill 154?

Mr. Kluge: I do not know. What is that? In the same municipality? I am sorry. Be specific.

Ms. Gigantes: Yes. You spoke to a need to change our definition of geographic division. The geographic division here can be a county or a regional municipality. Are they in different geographic divisions?

Mr. Kluge: They are in different geographic counties.

Ms. Caplan: Then they would not be included, but they could be.

Mr. Chairman: That is the point. I think there is valid comment on both sides.

Mr. Polsinelli: Mr. Chairman--

Mr. Chairman: I am going to finish.

Mr. Polsinelli: No, you cannot. I would like to make a comment.

Mr. Chairman: I am going to finish. As the chairman, I can use the prerogative of this gavel, which I can throw or use to make noise. I will be very brief. Your point very simply is that you want to be absolutely clear in the definition for the purpose of making sure the comparison of these plants does not compare apples and oranges, as you were talking about earlier.

Mr. Kluge: That is correct. Further, one is unionized and the other is not, which complicates the issue tremendously.

Mr. Chairman: Yes, that is a reasonable position.

Mr. Miller: We just want to have the factors of geographic divisions, different functionality of their business and the union-nonunion comparisons all taken into consideration by the committee. That is really our point.

Mr. Chairman: I think we will have to look at that section very carefully and see if we cannot make it a little more specific and definitive in terms of what it actually applies.

Mr. Polsinelli: I just want to point out that I think we were a little unfair to Mr. Kluge. He knows well that this legislation does not cover his two plants because they are not within the same geographic location.

Mr. Chairman: He did not know that; he made the point that he wanted to be absolutely certain.

Mr. Polsinelli: Ms. Filsinger does know that.

Mr. Chairman: We have had more than one spokesman say--

Mr. Polsinelli: If you will allow me to complete, as I extended the same courtesy to you earlier, I am saying that Mr. Kluge is here as the chairman of the Ontario division of the CMA and his concern regarding the definition of "establishment" is a well-founded one and one we should discuss. It was unfair on the part of some of the committee members to his specific business interests. That was not what he was representing; he was representing the views of the association.

Mr. Chairman: That is fair, but I think that when one looks at the section we are talking about, there is an element of vagueness, depending on one's interpretation. All the delegation is saying is, "Remove the vagueness so we will know exactly where we stand." I think it is appropriate for us to review that in terms of making absolutely certain we do not mislead the public.

Thank you very much for an interesting hour. We appreciate your representations.

Ms. Gigantes, Mr. Polsinelli and Ms. Fish, who is not here at the moment, there will be a subcommittee meeting at two o'clock. It will not be necessary for other members of the committee to be here until 2:30 p.m.

The committee recessed at 12:03 p.m.





J-61



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

TUESDAY, MARCH 3, 1987

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)  
VICE-CHAIRMAN: Fish, S. A. (St. George PC)  
Caplan, E. (Orion L)  
Charlton, B. A. (Hamilton Mountain NDP)  
Gigantes, E. (Ottawa Centre NDP)  
Knight, D. S. (Halton-Burlington L)  
O'Connor, T. P. (Oakville PC)  
Partington, P. (Brock PC)  
Polsinelli, C. (Yorkview L)  
Rowe, W. E. (Simcoe Centre PC)  
Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor  
Dean, G. H. (Wentworth PC) for Mr. Rowe  
Lupusella, A. (Dovercourt L) for Mr. Knight  
Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Elwell, C., Barrister and Solicitor, MacLean, Chervier

From the Canadian Association of Women Executives and Entrepreneurs:

Thornber, B., President  
Bailey, I., Vice-President, Public Affairs  
Hamilton, L., Member, Legislative Committee

From the Ontario Public School Trustees' Association:

Campbell, S., President  
Parry, R., Director of Public Affairs  
Phillips, W., Executive Director

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From United Steelworkers of America:

Gerard, L., Director, District 6  
Shell, B., Canadian Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 3, 1987

The committee resumed at 2:33 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: The first delegation to come before us is Christine Elwell, barrister and solicitor, if she will come forward, please. Ms. Elwell, whenever you are ready, you can start with your submission to the committee. I might mention by way of information that you have approximately half an hour, and I would like you to leave a little bit of time for questions. You can say whatever you like at the opening and then we will have the committee open up to questions following your submission. I welcome and thank you for coming. I apologize for being a little bit late.

CHRISTINE ELWELL

Ms. Elwell: I would like to thank the committee for the opportunity to present this submission respecting Bill 154. I attended in October 1986 and presented a written submission, copies of which have been provided for any new members who did not have an opportunity to receive copies of that submission.

My remarks today, however, are somewhat less prepared because I want to respond to some of the recent arguments put forward by leading employer organizations under the Charter of Rights and Freedoms. Two issues in that response that will be dealt with are (1) the scope and applicability of the bill to the private sector, and (2) the formula for determining gender job classes. Finally, if time permits, I would like to deal with some of the specific provisions of the bill.

The joint statement of the Canadian Federation of Independent Business, the Canadian Manufacturers' Association, the Council of Ontario Construction Associations and the Ontario Chamber of Commerce calls into question the constitutionality of Bill 154 and requests that it be referred to the courts for an advance ruling. In my submission, given the division of powers between the Legislature and the courts, such a procedure would not be appropriate. Nevertheless, if the bill is not seriously reviewed and consequently amended in terms of charter implications and international obligations, the legislation will inevitably be delayed and possibly defeated by the superior courts.

The joint statement denounces the exemption, presently in the bill, of businesses with fewer than 10 employees, claiming that such a design is contrary to their members' equality rights pursuant to section 15 of the charter.

The Retail Council of Canada, on the other hand, recommended that the scope of the bill be limited to employers employing more than five employees so as not to give small employers an unfair market advantage, yet the Canadian



Organization of Small Business Inc. pressured this committee to raise the floor to 20 employees, which would have the effect, according to appendix 2 of the green paper, of disfranchising 30 per cent of the working females in this province from the benefit and equal protection of Bill 154.

Moreover, the Canadian Organization of Small Business Inc. has admitted that 85 per cent of small businesses in Ontario employ fewer than 80 employees. A small business has been generally defined as having fewer than 100 employees. Under the present scheme of the bill, part III exempts employers from the duty of adopting policies that provide for pay equity and delays in the preparation and implementation of a pay equity plan.

Yet again, according to the green paper, 50 per cent of the women in this province are employed by firms with fewer than 100 employees. These two exemptions effectively permit 85 per cent of businesses in Ontario to continue to practise wage policies that clearly discriminate against women and prima facie contravene section 15 and section 28 of the charter, because legislation that does not prohibit, permits. This bill, which allows continual discrimination against women with respect to wage policies, in effect allows that discrimination.

These employers are in no way substantively and meaningfully within the scope and applicability of the legislation. This bill in no way meaningfully fulfills the government of Ontario's international commitments to the International Labour Organization convention 100, which clearly states that members shall "ensure the application to all workers of the principle of equal remuneration...for work of equal value." Such massive exemptions from human rights and labour legislation are unprecedented. My specialty is labour law for unions and employees, and there is certainly no exemption under the Employment Standards Act for 85 per cent of employers from paying a minimum wage or four per cent vacation pay.

The restrictions in these types of legislation are very narrowly and restrictively defined. Prima facie, 50 per cent of the women in this province will have their charter rights contravened because they are not enjoying the equal treatment, equal protection and equal benefit of the law by virtue of Bill 154.

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If, by circumstance, a woman is employed in a firm with fewer than 100 employees, she is not entitled to the benefit of the human right or employment standard of pay equity, yet this segment of women suffers from the same wage gap and wage discrimination as the other 50 per cent that is within the scope of the bill.

In Re: McDonald and the Queen, the Ontario Court of Appeal recently affirmed that the purpose of section 15 of the Charter of Rights is to require that those who are similarly situated be treated similarly. How would the Ontario Attorney General (Mr. Scott) defend this obviously unequal treatment and unequal application of the law?

The Attorney General may attempt to place reliance on subsection 15(2) of the charter which states that the equality rights provisions in subsection 1 do not "preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of...sex." Thus the Attorney General could argue that the bill is an affirmative action law or program, with its

object to remove a wage gap, at least for 50 per cent of women in Ontario and therefore encourage the equality rights enshrined in subsection 1.

Yet legislation that permits and preserves the discrimination against the remaining 50 per cent of the women in this province would be difficult to defend. Courts to which it would be submitted would look not only at the object of the legislation but also at its design, structure and actual effect.

The present massive exemptions from the scope of the act are not designed to relieve against discriminatory wage practices towards women, but are designed to afford some sort of balancing of interest for the purposes of political expediency or to allow what the Legislature may believe to be a reasonable limit on the constitutional right to equal treatment.

I point the committee to section 28 of the charter where women's equality rights are not subject to that sort of balancing. Section 28 states, "Notwithstanding anything in this charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons." This provision was included at the last round of negotiations on the Constitution by women's groups.

According to Walter Tarnopolsky of the Ontario Court of Appeal in his text on equality rights, the purpose of section 28 is, among other things, to preclude the courts from upholding legislation that discriminates against female persons by virtue of section 1 of the charter as a reasonable limit in a free and democratic society. Therefore, I submit that the Attorney General would not be able to rely upon the reasonable limit provision of the charter when the equality rights provision of the bill infringes so many women in this province.

Women's rights to pay equity, once enacted, will not be easily compromised as a reasonable limit in society. Even assuming that courts would be prepared to enter into a balancing of interests or engage in a section 1 inquiry in an effort to defend the massive exemptions, it is submitted that such an attempt would fail, based on the recent criteria of the Supreme Court of Canada in *Regina versus Oakes*.

The exemptions in the bill would have to be demonstrably justified with respect to the following criteria. The measures or exemptions that limit the right to equality must be designed to achieve the object of the legislation. The limits on the rights must not be arbitrary, unfair or based on irrational considerations. The means chosen must be rationally connected to the objectives. The legislation must impair as little as possible the equality rights in issue. Finally, the effects of the legislation must be proportional to the objects.

The Attorney General, who would seek to limit the constitutional rights of so many women, especially in view of the wording of section 15 and the entrenchment of those rights in section 28 of the charter, bears a very heavy onus of proof, which Chief Justice Dickson in *Regina versus Oakes* declared must be applied rigorously.

How can it be fairly said that exempting 85 per cent of business and 50 per cent of women from the scope of the bill is designed to achieve the object of pay equity? How can such a result not be considered arbitrary, unfair or based on the irrational consideration of political expediency? Why let the



bill get caught up in such an extensive inquiry? The courts will require clear evidence of the alternative measures that the Legislature considered.

What are some of the alternatives that have been considered? One alternative that was discussed quite extensively in the green paper, but that is surprisingly absent from Bill 154, is a standard contract compliance approach to encourage compliance with the law. Where is that provision now? Moreover, has the Legislature seriously considered not allowing any exemptions from the scope and applicability of the law?

We now see the Retail Council of Canada and the Canadian Organization of Small Business haggling over whether the floor should be 10, five or 20 employees. The resentment from the business groups is at least equal to the resentment that 30 per cent of the women in this province will feel if they are precluded from the right to pay equity because the floor is 20. Such a result would clearly be unfair and arbitrary.

In my respectful submission, the exemptions found in part III are also patently unfair. Section 6 of the act describes the mandate or legislative intent that employers shall establish practices that provide for pay equity. That is the general principle, but section 20 says that notwithstanding this provision, employers can continue to engage in discriminatory wage practices.

That is not a clear indication of what the general principle or the intent of the law is. You give it with one hand and take it away with another. Notwithstanding this human right or employment standard, there is no corresponding duty on employers to comply with the legislative intent. Where a woman finds herself in the completely fortuitous circumstance of working for an employer who employs fewer than 100 employees, this employer can continue to practise discriminatory wage policies for up to six years before a woman can even have a right to complain.

Why not clearly state in the legislation the general principle that employer wage practices provide for pay equity, period, full stop? The present wording of section 20, which states that notwithstanding section 6 the employer can continue in these practices, flies in the face of any serious proclamation of the human right to equal remuneration for work of equal value. Bringing all employers within the scope and applicability of this fundamental human right is certainly something that should be encouraged.

Bill 154 as designed at present already provides the commission with regulatory power to change or extend posting dates or adjustment minimums, but to effectively exempt so many businesses and so many women from the general principle of pay equity is to proclaim and permit a continual discrimination against women respecting wage practices. As it is designed at present, the bill is a deception. It is smoke and mirrors.

Failing the adoption of these and other reasonable alternatives to close the loopholes and eliminate the massive exemptions, it is quite predictable that there will be extensive corporate reorganizations in this province so as to avoid pay equity. If I were corporate counsel or if I were an employer labour lawyer, I would advise my clients to reorganize their businesses so that there are fewer than 10 employees where possible and at the very least fewer than 100. It would not take very much creative thinking to avoid the already scant scope of this bill.

The second issue to be considered in terms of the charter is the decision of this committee to retain the patently unequal percentages used to



determine female and male job classes. This was dealt with quite extensively in my October submissions, but the same provisions appear in this bill.

The rationale for this obviously unequal treatment has been the ease of administrative identification of job classes and to reflect the present lower level of women in the work force. Again, prima facie, a woman's right to equal treatment is denied and the courts will require clear and convincing evidence to justify the design. That is even assuming the courts are willing to review the different percentages in terms of a section 1 charter equality, given section 28 which demands that women have equal rights notwithstanding a section 1 inquiry. As I say, this issue was discussed there and I will not dwell on it any further.

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These and other constitutional challenges will not go away given the present design of Bill 154. This is the last chance that this committee will have to bring the bill in line with its constitutional and international commitments and to avoid the lengthy delay and possible defeat of this bill by the superior courts. The employers will no doubt rejoice in such a result, but the women of this province, who make up half of the electorate, will blame this government for reneging on its commitment to provide a clear mandate for equal pay for work of equal value.

In terms of specific provisions, I think this bill has been much improved over Bill 105. The scheme in section 5 is particularly noteworthy. However, there are some terms that ought to be defined and not left to regulation, such as "temporary" and "red-circling" in section 7. The definition of employee ought to include a person who was an employee, which is consistent with section 1 of the Employment Standards Act.

With respect to the reprisal provision in subsection 8(2), again as a practitioner, I recommend that the prohibition include the attempt to intimidate, coerce or penalize, which is consistent with section 70 of the Ontario Labour Relations Act. Moreover, there ought to be a reverse onus provision so the employer bears the burden of proof that the change in working conditions was not a reprisal. These reverse onus provisions have recently been approved by the Divisional Court with respect to the Ontario Labour Relations Act.

In addition, it ought to be clearly stated as a fundamental principle that employers cannot contract out work in order to avoid compliance with this act. This is especially important if the numerical cutoffs I dealt with earlier, dealing with the applicability and scope of the act, are retained given the manipulation and corporate structuring that is going to be taking place as a result of these numerical cutoffs. Consequently, provision ought to be included for successor and employer declarations as are found at present in both the Employment Standards Act and the Ontario Labour Relations Act.

Unless there are any questions, those are my submissions.

Mr. Chairman: Thank you very much for an interesting submission. We do have some questions.

Ms. Caplan: I would like to question some of your statistics. Perhaps I did not hear you correctly, but you referred to your impression that this bill excluded, as it stands now, 50 per cent of women.

Ms. Elwell: Yes. The green paper's appendix 2 stated that 50 per cent of women in this province work for employers who employ fewer than 100 employees.

Ms. Caplan: If I may, Mr. Chairman, in that case, I would like to correct the information. This bill would cover better than 85 per cent of women, because some 12.4 per cent of women work in firms of fewer than 10 employees.

Ms. Elwell: When you suggest that it covers it, that is in terms of two aspects. There is the question of whether section 6 is applicable at all. Right now, when there are fewer than 10, it is not. So there is that exemption. There is also the exemption of section 6 in terms of part III where there are fewer than 100. There is still no clear statement that employers with 100 or fewer employees must adhere to policies that provide for equal pay. In that sense, they are exempted as well.

Ms. Caplan: I will not debate, except to say that, in those cases, I believe the act does cover that with the complaint-based model. It is clearly stated that all employers of 10 or more must comply with the basic premise of the act and not discriminate based on gender in their hiring and pay practices.

The other question I had was when you referred to the 30 per cent figure; that is, if the number were raised to 20 employees. I assume you got that from the green paper as well. Other than a statistical one, the question is on compliance as it relates to other pieces of legislation. We have heard representations from the business community that it believes the act already contains a reverse onus clause. The point you are making is that you do not believe that exists.

Ms. Elwell: No. In fact, Walter Tarnopolsky in his textbook clearly argues--and of course he is on the Ontario Court of Appeal--that subsection 15(2) was put in there not only to preclude a section 1 analysis but also to forestall any reverse discrimination argument.

Ms. Caplan: It was my view--and this is a question, Mr. Chairman--that for those with 10 employees or fewer would receive what I refer to as an indirect benefit because of the substantial change in the market and the market forces that would come into play once this bill was fully enacted. Is it your view that this would be sufficient to offset a Charter of Rights challenge?

Ms. Elwell: No. The Canadian Organization of Small Business admitted that 85 per cent of its employers employ fewer than 10 per cent; therefore a large segment would not be within the scope of the bill.

Mr. Chairman: You said 10 per cent; you meant 10 employees, I believe.

Ms. Caplan: Ten employees or fewer. However, the bill does cover some 85 per cent of women in its scope. With regard to the question of the statistics and the numbers, the fact is they are covered in different ways. Those with more than 500 employees are covered through the proactive model; those with 10 to 100 are required to comply with the act through a complaint-based model. Is your concern the two different mechanisms the bill approaches?

Ms. Elwell: Your fundamental position that 85 per cent of women are

covered by this bill rests on the fact that section 6 says there should be these practices. I point to section 20, which says, "Notwithstanding subsection 6(1) or (2)." To me, that says there is no duty on employers to have practices which provide for pay equity. It says, "Notwithstanding subsection 6(1) or (2)," which is the general principle.

Ms. Caplan: May I have a look at that section?

Ms. Gigantes: Section 20, in referring to section 6, says, up until the point employers are whacked with the effective parts of this legislation. In other words, if you have fewer than 100 employees, you have to wait five years. Up until then, you can actually discriminate more than you have been doing right now but, at year five, you are supposed to stop and refer to section 6. I think that is where Ms. Caplan is getting confused about what you are saying. A time line is established in section 20.

Ms. Caplan: It is the phase-in. That is right.

Ms. Gigantes: Essentially section 20 says that if I am an employer with 25 people in my firm, up until year six, I can even let the situation for my female employees get worse, because it says, "Notwithstanding subsection 6(1) or (2)." Any of my practices are going to be okay until, whacko, at year six, my employees can suddenly start lodging complaints.

Ms. Caplan: But it is retroactive for those, so the onus will be on the employer to want to comply, because the penalties will be significant. It is retroactive for those subject to complaints.

Ms. Caplan: The "Notwithstanding," as I read it, is to allow for the phase-in.

Ms. Gigantes: Do you provide interest payments too?

Ms. Elwell: It says that section 6 does not apply, so, for at least five or six years, 50 per cent of the women of this province will not have the equal protection of the bill.

Mr. Polsinelli: That is the phase-in provision; that is all it is. It just says it is triggered after a certain time. It does not say it does not apply; it just says it is phased in over time.

Ms. Elwell: Then another phrase other than "Notwithstanding subsection 6(1) or (2)" would help to clarify that.

Mr. Polsinelli: I think it is quite clear.

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Mr. Chairman: Could I move on to Ms. Gigantes? I ask that you keep the questions short and the answers brief so that we can get to other members of the committee.

Ms. Caplan: Did I keep my questions short?

Mr. Chairman: Your questions were very short and succinct and to the point. I want to compliment you. I know Ms. Gigantes will take your lead, Ms. Caplan.



Ms. Gigantes: I sure will try. Thank you for your presentation. Once again, I found it fascinating, as I did on the earlier bill we dealt with.

You are telling us that rough justice ain't going to be enough for the Supreme Court. You may well be right. I have some of the same concerns you do, but from a practical nature, rather than thinking particularly about the Supreme Court. What I would like to take you through really flows from what Ms. Caplan is asking about; that is, the different mechanisms provided.

As I understand the legislation--and you can correct me and give me your understanding--if you work in a firm that has more than 100 employees, you have two kicks at the cat. First, your employer is supposed to provide you with an equal pay plan phased in at some point. Second, you can go back under section 6, which relates to section 5, and say that the equal pay plan has not provided pay equity as defined in section 5. That leaves out any complaints by men as a work class which, to my mind, is questionable.

Beyond that, what is the situation of a woman who works in a firm with 25 people? If, in fact, her employer has not been called upon under this legislation to produce an equal pay plan because there are fewer than 100 employees, then how does she get any redress out of section 6 and section 5 to which it relates? Section 5 defines her equal pay status as a pay equity plan, but there is no call upon employers who have fewer than 100 employees to produce a pay equity plan. So what kind of legal situation does that leave us in?

Ms. Elwell: It leaves us in a situation where women who are in firms with fewer than 100 employees do not have the benefit of the general principle that employers provide pay equity or establish practices that provide for pay equity.

Ms. Gigantes: I understand what that means, in a sense.

Ms. Elwell: It means that the legislation is designed so as to virtually disenfranchise 50 per cent of the women.

Ms. Gigantes: If I am a person who works for a firm with 25 people and my employer has not had to provide an equal pay plan, and six years after the effective date of this legislation I make a complaint to the commission, what can the commission give me?

Ms. Elwell: The commission can give you nothing more than what the intent of the legislation is.

Ms. Gigantes: What would it mean under sections 6 and 5 for me to make a complaint? I go to the commission and I say, "Section 6 has been contravened," and the commission says, "Let us look at section 5, which section 6 relates to." Under this legislation, what can the commission do for me? My employer is not called upon to create a plan, and pay equity is defined in terms of the kind of plan we have here.

Ms. Elwell: You would have no recourse.

Ms. Gigantes: I do not understand.

Mr. Polsinelli: It seems to me that if you are in a firm with between 10 and 100 employees, there is no mandatory requirement on the employer to file a pay equity plan. However, once the legislation is triggered

and once the phasing-in mechanism or once the five or six years have elapsed depending on the situation, your recourse is that you phone up the commission and you say, "I am being discriminated against." The commission will send a review officer to your establishment.

Mr. Charlton: To review what?

Mr. Polsinelli: The review officer will look at section 5 of the legislation, and it says how pay equity is achieved. The review officer will look at the job classes in the establishment and the rates of pay and will try to work out a compromise between the employer and the employee. If no compromise can be reached, the review officer will give them a compromise. He will issue an order as to, in his opinion, how pay equity could be achieved as defined by section 5 of the legislation.

At that point, if either party is unhappy with the order that is left by the review officer, there is an appeal to the commission. But there is a process established. There is a system in place in the legislation that will provide pay equity for every employee in every establishment of greater than 10 individuals. But you have to wait until the phasing-in mechanism takes its toll or takes place. Depending on the size of the establishment, that varies between two and six years, but the mechanism is there.

Mr. Chairman: We do not want to get into debate.

Ms. Caplan: Absolutely.

Mr. Polsinelli: That was not debate.

Mr. Chairman: I am sure Mr. Polsinelli was offering it as a point of information.

Ms. Caplan: Clarification.

Mr. Chairman: Ms. Gigantes, may I move to Mr. Baetz?

Ms. Gigantes: Yes, you may.

Mr. Chairman: Essentially, we have run out of time, and Mr. Baetz has been patiently waiting to question the witness.

Mr. Baetz: Having made a reasoned, real case that the bill as it exists discriminates or, you say, disfranchises about 50 per cent of the women in the labour force--I think those were your statistics--are you convinced that the bill, unless dramatically amended, will be rejected by the Supreme Court as violating the Charter of Rights? Are you absolutely convinced of that?

Ms. Elwell: Especially in view of section 28. Section 28 says there can be no reasonable limit on equality rights. There is no balancing of interest that can arise, unlike any other piece of legislation. When you are dealing with discrimination and legislation that provides for equality rights, this is notwithstanding section 1.

This is why I harp on the word "notwithstanding." In my mind, as a legal practitioner, it precludes recourse to it. There would not be recourse, according to Walter Tarnopolsky. That is a good source. Section 28 precludes a section 1 inquiry.



Mr. Baetz: Your recommendation to the committee then would be either to drastically amend the bill or to drop it.

Ms. Elwell: I would say be clear on the principles; say there must be policies that provide for pay equity--period, full stop. Then if you want to change transition periods or whatever you want to do to phase it in, fine. Right now, with the clearly unequal treatment of fewer than 10 employees and the present wording of section 20, I defer to the honourable minister that it does not mean they do not have section 6 rights. In my view, when I read section 20, that is what it says. Based on those two major exemptions, it is doubtful whether the courts will even entertain a balancing act under section 1, given the strong wording in section 28.

Mr. Baetz: We are all politicians here on the committee. You have no doubt heard the expression that politics is the art of the possible.

Ms. Elwell: Okay, we will wait to see it.

Mr. Baetz: We are living in an imperfect world. We are trying to make progress. In view of that, would you encourage us to go on and practise the art of the possible, even if it is going to be less than perfect from a strictly legal point of view?

Ms. Elwell: Of course, I would. However, I want to emphasize the fact that when affirmative action programs--and this bill is part of a general affirmative action program--are reviewed by superior courts, the courts just will not look at the good intentions of the Legislature. They will look at the actual design and structure of the program to see whether any constitutional limits are rationally connected to the objective of the act. It is difficult to defend the exemption for the women in firms with fewer than 10 employees and, as I read section section 20, those in firms with fewer than 100 people. If those exemptions have anything to do with achieving pay equity, the courts will review not only the design but also the Legislature's good intentions.

Mr. Chairman: I am going to have to conclude this session. Thank you, Ms. Elwell, for your presentation to us.

Ms. Elwell: Thank you very much.

Mr. Chairman: The next presentation is the Canadian Association of Women Executives and Entrepreneurs. We would ask the delegation to come forward please. May I welcome your association to our committee meeting. Once you have comfortably found a chair, I would ask that you introduce yourselves individually for purposes of Hansard so that we know who is speaking. Thank you for taking the time to come before us. We look forward to your presentation. You may begin whenever you are ready.

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#### CANADIAN ASSOCIATION OF WOMEN EXECUTIVES AND ENTREPRENEURS

Ms. Thornber: My name is Barbara Thornber and I am president of the Canadian Association of Women Executives and Entrepreneurs. I am currently a senior executive with a large social service agency, and I am a former business owner myself. I would like to ask my colleagues to introduce themselves, after which I will make a brief opening statement on behalf of the association and will then be open for your questions.



Ms. Bailey: My name is Irene Bailey. I am vice-president of public affairs with the association, and I am a self-employed insurance broker.

Ms. Hamilton: My name is Lynda Hamilton, and I am an independent consultant in compensation. I am also a course co-ordinator for job evaluation and instruction with the Canadian Compensation Association. I am currently working on a pay equity project at Ryerson Polytechnical Institute.

Ms. Thornber: The Canadian Association of Women Executives and Entrepreneurs strongly endorses the principle of pay equity. We view it as a management and productivity issue. We believe Bill 154 represents significant progress towards employment equity in Ontario. We believe it represents a commitment to redress the historic undervaluation of women's work and we support the bill wholeheartedly. We urge all parties to work together to ensure its speedy passage.

Women Executives and Entrepreneurs has a membership of over 300. Forty per cent of our members are business owners, and the others are women who hold management positions in organizations in the private and public sectors. We feel we offer a somewhat unique perspective. Our members who are managers and business owners will be responsible for implementing this legislation. Our members who are employees will be affected by the bill as well.

The association has been on record since 1978 in support of equal pay for work of equal value. We recognize that this is a very important and often very emotional issue, about which there is a regrettable amount of misunderstanding and misinformation. We also recognize that a wage gap of more than 35 per cent exists between men and women and we believe this wage gap must be addressed by employment equity programs. Pay equity legislation is only a beginning to employment equity.

We look at pay equity as a management issue that is part of a much larger strategic change taking place in the economy today. These changes are going to affect both the quality of working life and the efficiency and effectiveness of Canadian business enterprises.

As managers and business owners, we are concerned about maximizing the potential of our employees. We are concerned about getting value for our human-resource investment. We believe maximum productivity from all employees is paramount and under-utilization of women employees is a disadvantage to everyone. There is ample evidence to support the view that employees who believe they are being fairly treated by their employers are more productive and more responsive workers.

The association is particularly pleased that so many of its recommendations to the pay equity public consultations have been incorporated into Bill 154. The following are five specific examples in the legislation.

1. Our members have consistently advocated a proactive stance, and we are pleased to note that the bill provides employers with the flexibility to use their own knowledge and resources rather than having to utilize an imposed system.

2. We applaud the enforcement measures in Bill 154. An act without teeth is flaccid. To quote Judge Rosalie Abella: "Equality demands enforcement. It is not enough to be able to claim equal rights unless these rights are enforceable."

3. We find the time frame allotted to the different-sized organizations to be well thought out. It allows smaller businesses the time to acquire the necessary knowledge and to plan effectively for any financial impacts that may occur. We just do not think it is practical to expect such changes to take place overnight, although we do want to get this legislation in quickly so we can begin the time frame.

4. The association was particularly concerned that small business owners be given assistance in job comparison techniques if they requested them. We were pleased to note that the Attorney General (Mr. Scott) said in his speech introducing the bill that the Pay Equity Commission of Ontario will provide "specialized educational materials and consultative services" to small business upon request.

5. We noted with approval subsection 12(3), which allows female job classes with the lowest job rates to receive accelerated adjustments.

The prime thrust of our association and the message to you today is that we want to see this legislation passed as soon as possible. However, I would like to draw to the committee's attention a few points in our original position which have not been incorporated into the bill.

First, we continue to believe that the concept of gender predominance diminishes the opportunity to apply pay equity to the work force as a whole.

Second, we were pleased to see that our recommendations concerning the establishment and activities of the commission were accepted. However, we did recommend that the commission establish an advisory council made up of high-profile leaders from the public and private sectors. This council would be a sounding board for the commission on contentious or global issues, where a community leader could reinforce and add credibility to the commission's position.

Finally, workers without a male comparison group are excluded under this bill. We have a concern about that and recommend that this issue be addressed in the act rather than being left to the pay equity commission.

The Canadian Association of Women Executives and Entrepreneurs believes that Bill 154 is clear in its intent to provide equitable compensation for women in the work place. We believe that it can be effectively implemented throughout the public and private sectors and that it is a significant step forward for the women of this province. We would like to congratulate the government on its remarkable initiative in drafting this proactive legislation.

Walter Wriston, the retired chief executive of Citicorp, said: "The development of truly multinational organizations has produced a group of managers who really believe in one world. They know that there can be no truly profitable market where poverty is the rule and they recognize no distinction because of colour or sex, because they understand that it is talent that is the commodity that is in the shortest supply."

Women Executives and Entrepreneurs believes that Ontario managers can adopt the attitudes necessary to meet the challenges of global competition. We believe that pay equity has to do with fairly compensating the talent of this province to maximize the productivity and the competitiveness of Ontario's businesses. Our association urges the members of the standing committee on administration of justice to work together to ensure the speedy passage of Bill 154.



Mr. Chairman: Thank you very much. There will be questions, I believe, from members of the committee.

Ms. Gigantes: Thank you for your presentation. You are one of the few groups that have come before us in support of the general principles of the legislation which has accepted, for example, time lines in the bill. I would like to hone in on that. A large portion of women who work in the private sector work for firms of under 100 employees. Under this legislation those women will have to wait five or six years without an equal pay plan. Then they can make a complaint to the commission.

We had a submission, for example, from the Young Women's Christian Association which indicated that in a case it thought of as a typical work case, it might take a woman up to 22 years, given that initial delay in a small firm and given the limitation of one per cent adjustment per year. Yet you seem to feel the process outlined here is going to be adequate. Can you indicate to us why you feel it might take up to six years for an employer with, say, 48 employees to take a look at the work place, do some job comparisons and make adjustments?

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Ms. Hamilton: I will try to answer that for the group. Obviously, it would not take six years, given that a perfect world and access to information would be able to provide the organization with the gender neutral comparison system.

Unfortunately, in a lot of smaller organizations, people are very much afraid of what is going to happen to them. It is going to take a while for the large organizations to sort out their system and for the information that will be acquired through the Ontario Women's Directorate and the education programs and the adjustments that are going to be made throughout our society as a whole to filter down to organizations as the pyramid goes in inverse order.

I think that gives us enough time to address some of the problems we may not have all the answers to now. In terms of job evaluation activities and addressing gender bias and systemic discrimination, a lot of those things are going to sort themselves out with some of the larger organizations. I am speaking as a professional trying to address this problem within a larger organization.

As we sort that out and as the market values change for various positions, you will ultimately begin to see that the knowledge base is better, and therefore when you get to smaller organizations, they will be able to react. It certainly will not be difficult for them. They will be able to react in a more enlightened fashion, and we will be able to provide them with that information in a more enlightened way.

Ms. Gigantes: Assuming that 50 per cent of women in the private sector are working for firms with fewer than 100 employees and that under this legislation they are going to have to wait five or six years to make a complaint on what will be for them probably not terribly adequate information, because there is no requirement for the posting of a plan, in your professional experience, do you think it would be easier for a manager in a firm of 400 or a manager in a firm of 25 to sit down and tackle the problem, which is going to be some way of working out comparisons between job classes based on skill, effort, responsibility and working conditions?



Ms. Hamilton: First of all, I would not generalize, because there are different management skill levels involved here. What one manager can do with a firm of 25 or 100 employees and what another management team would do with an organization of 500 are quite different.

If I was in the position of being in the organization of 25, obviously with my knowledge, it would not be that difficult to come up with some assessments and values, because I could look at a more simplistic situation. You have only so many jobs that you are preparing. It is hard for me to answer because of the varying management skills that are involved. It is easy for us to make an assumption, but--

Ms. Gigantes: I understand what you are saying. One of the reports that was done for the Ministry of Industry, Trade and Technology by Urban Dimensions on this subject was a survey of firms of fewer than 100 employees. There were responses from 302 of them. The firms were asked, "What would be a reasonable time frame for implementation of equal pay for work of equal value?" Fifty per cent of them said, "Within two years." Would that surprise you?

Ms. Hamilton: No. Again, it depends on the skill level, but if I can second-guess the government, which is what I should not do, in coming to terms with it, it is not just whether they can do the evaluation. It is also a matter of being able to get yourself ready to pay. There are financial considerations in terms of making wage adjustments; there are considerations in terms of the marketplace. I would suspect a lot of that has come into play, in addition to the fact that it is just a straight analysis and adjustment may be quite different from some of the other financial and market ramifications--

Ms. Gigantes: I think you were here when Ms. Caplan said to an earlier witness that when a complaint was lodged by a person who had to wait five or six years, it could summon up retroactive payments. It is a matter of pay now or pay later, except somebody gets the interest in the meantime. I am not convinced she is correct in her reading of the bill but--

Ms. Bailey: There was one point in your mention of these submissions. I think it was by the National Action Committee on the Status of Women. Was it NAC you referred to with the submission of the 20-year time period?

Ms. Gigantes: It was the YWCA.

Ms. Bailey: The YWCA. That really does not take into account the fact that an awful lot of them do not stay in jobs longer than three or four years. If they saw greener pastures elsewhere, do you assume they would continue to stay there for 18 years while they caught up? I think market forces are not being taken into account.

Ms. Gigantes: One can worry about that, too, because it would mean women to whom the legislation should apply will not have the benefit with a former employer if they have had to move on. Thank you.

Mr. Baetz: Since you are the association that has women who are entrepreneurs, all in one association, would you say you have roughly 300 entrepreneurs?

Ms. Thornber: Forty per cent of our members are entrepreneurs.

Mr. Baetz: No doubt, there are among them quite a number who employ quite a few people. Have you found that they are as apt to practise gender wage discrimination as other entrepreneurs? Have your own female entrepreneurs been part of the marketplace practice, or are they much more enlightened?

Ms. Bailey: Again, it is hard to generalize, but I understand that it is the case. They have done so, because that is the going wage rate. They find out the wage rates and that is what they are paying across the board, so they need to be forced as much as anyone else, not unwillingly forced. Otherwise, they lose out.

Ms. Gigantes: Supplementary to that, would you say the reason for that is that we are talking about systemic as opposed to overt discrimination?

Ms. Bailey: Yes, absolutely.

Mr. Chairman: All right, if there are no further questions, thank you very much for your submissions to us. We appreciate your taking the time to come before us. Thank you very much.

Members of the committee, we are going to take a very brief five-minute break before we go to the Ontario Public School Trustees' Association. It will be a five-minute break for committee members.

The committee recessed at 3:29 p.m.

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The Acting Chairman (Mr. Dean): We will resume after this short break. We are glad to welcome as the next presenters a delegation from the Ontario Public School Trustees' Association. Please introduce yourselves and the time is yours for the next half hour. We hope that will be suitable time to hear you and have a few questions.

#### ONTARIO PUBLIC SCHOOL TRUSTEES' ASSOCIATION

Mrs. Campbell: We represent the Ontario Public School Trustees' Association. On my left is Bill Phillips, executive director of the association. On my far right is Ross Parry, director of public affairs. Sitting beside me on my right is John Jakub, director of legal and personnel services. I am Sharon Campbell, a school board trustee from the Prince Edward County Board of Education and president of the Ontario Public School Trustees' Association.

I believe you have before you our presentation with the red cover. Inside that red cover is a list of the member boards of our association. There are 54 boards listed there. Added to that list are two new members: Nipigon-Red Rock, a small northern board, and the Carleton Board of Education, making a total of 56 member boards.

The Ontario Public School Trustees' Association, on behalf of its 56 member boards, wishes to express concern over several aspects of the recently introduced Bill 154, the Pay Equity Act, 1986. While not disagreeing with the basic premise that work performed by individuals that is equivalent in the same establishment should be paid the same, OPSTA is concerned that the implementation as outlined in Bill 154 will create serious problems for school boards in Ontario. OPSTA believes that the philosophy of pay equity is



reasonable. OPSTA has concerns, however, with respect to the legislative form Bill 154 takes and the resulting implications for school boards.

Part II of Bill 154 establishes for school boards and others in the broader public sector a mandatory posting date one year from the date the bill is proclaimed. According to section 11, "Before the mandatory posting date, every employer to whom this part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class."

Subsection 12(2) provides that complicated documents known as pay equity plans shall be developed and made available to employees prior to the mandatory posting date. These plans:

"(a) shall describe the gender-neutral comparison system used for the purposes of section 11;

"(b) shall set out the results of the comparisons carried out under section 11;

"(c) shall identify all positions and job classes in which differences in compensation are permitted by subsection 7(1), (2) or (3) and give the reasons for relying on such subsection;

"(d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 11, describe how the compensation in those job classes will be adjusted to achieve pay equity; and

"(e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,

"(i) the second anniversary of the effective date, in respect of employers in the broader public sector...."

Pay equity plans in a unionized setting must be developed jointly with the union or unions representing the employers.

All this is to be accomplished within one year. This is unrealistic. School boards in Ontario vary greatly in size and as a result vary greatly in complexity. In terms of organization, school boards often have several bargaining units for negotiation purposes, including bargaining units of teachers, secretarial and clerical staff, custodial and maintenance staff and others. School boards also employ a variety of support staff including management staff, teacher aides, supply teachers, psychologists, social workers, media technicians, cleaners, lunchroom supervisors and so on. In many cases, but not all, these are nonunionized employees to whom Bill 154 would apply.

For many school boards, developing a pay equity plan for such a diverse labour force would be an immensely difficult task. To do so within one year will be impossible.

School boards should not be required to implement pay equity in a shorter time period than employers in the private sector under Bill 154. A period of at least two years should be allowed as is the situation for private sector employees covered by Bill 154.



It is clear that school boards and teachers, through a process of free collective bargaining, have established a gender-free compensation system. All teachers under the provisions of the School Boards and Teachers Collective Negotiations Act are paid as a combination of their length of service and qualifications, commonly referred to as the grid. Section 4 provides that, "For the purposes of this act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed."

While there is an exemption for seniority or length of service in section 7 of Bill 154, it is not expressly provided that this qualification can be a basis for different compensation. A result, therefore, could be that the grid system of compensation for teachers could be radically altered by Bill 154. The salaries of lower-paid teachers would have to be raised, with very substantial cost to school boards.

While not a certainty, the above is a realistic possibility given that the qualification is not expressly recognized in Bill 154 as a legitimate basis for different compensation. There is great concern among school boards that the present system of determining salaries would be fundamentally altered.

Salary grids for teachers have been developed and clearly applied in a gender-neutral manner and should not be altered by Bill 154. To ensure this, OPSTA recommends that Bill 154 exempt teachers from its application. At present, teachers are exempted from the Labour Relations Act and are governed by Bill 100, the School Boards and Teachers Collective Negotiations Act, for collective bargaining purposes. In addition, teachers, because of their unique working conditions, have been exempted from certain parts of the Employment Standards Act. Exempting teachers from Bill 154 would not therefore be a precedent, as teachers have been treated differently in two other key areas of labour-management relations.

OPSTA recommends that Bill 154 not provide for job comparisons across bargaining units, nor for comparisons of unionized with nonunionized workers. Bill 154 allows such comparisons. This comparison could lead to unfair results. As discussed in the green paper on pay equity, enhanced bargaining power could explain some of the wage gaps between unionized and nonunionized employees, and between employees in different bargaining units performing work of equal value. If it is not possible to make an allowance for bargaining power, the pattern of establishing pay differences and closing them creates a wage spiral.

School boards will be placed in a position of double jeopardy if salaries that are freely negotiated between parties can be later increased in accordance with Bill 154 through comparison with other bargaining units.

Collective bargaining allows the parties to determine the salaries, benefits and working conditions. Different bargaining units may have different bargaining priorities that could result in differing benefits. Some bargaining units may place an emphasis on job security whereas others may place emphasis on salaries. This could result in jobs of equal value receiving different rates of pay.

Take the example of a female-dominated bargaining unit that bargains with a school board in good faith and settles for an increase of four per cent and a new clause providing for very strong job protection for all members of the bargaining unit. At the same time, negotiations with a male-dominated

bargaining unit have concluded with an increase of five per cent and a new clause that offers very little job security to the membership. While all parties have negotiated in good faith, as required according to labour relations legislation, under Bill 154 the female-dominated bargaining unit could allege that there is no pay equity in terms of salary between the bargaining units.

For these reasons, OPSTA recommends that Bill 154 should not be applied across bargaining units and should not allow for comparisons of unionized with nonunionized employees.

The Acting Chairman: Thank you for the presentation. We have a few people who wish to ask questions. The first is Mr. Ward, the parliamentary assistant to the minister.

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Mr. Ward: I have a lot of trouble understanding your concern over the qualifications, and understanding or comprehending what kind of impact this legislation will have, particularly as it relates to teachers' salaries. There is section 4, which enunciates the skill, responsibility, etc. There are the section 7 exemptions, seniority and a merit compensation plan free of gender bias. Throughout your brief, you indicate your compensation plans for teachers are free of bias. Can you explain to me how you define this qualifications concern you have and how it impacts on your compensation package?

Mrs. Campbell: Presently, the grid for teachers has two elements. One is the length of experience, the length of time in service. The second is qualifications or additional courses that have been taken in a specific area to upgrade qualifications, for instance, for a special education teacher or a librarian. That person has to have special qualifications. They would have taken additional courses in training beyond the basic teacher training required to become a teacher.

We are concerned that, given the legislation as it is formulated presently, there would be no allowance for additional qualifications in the compensation. There would merely be allowance for experience, for time on the job. Addressing this matter by the word "skill" does not equate necessarily to additional qualifications. Obviously, we hope the additional qualifications will bring the skill, but in fact the skill related to the qualifications is not something we are discussing.

Mr. Ward: For instance, you say that if one has to take additional courses to obtain the qualifications to become a librarian, one's responsibilities have changed.

Mrs. Campbell: Not necessarily, because she will have a classroom of children in the same way a regular grade 3 teacher, for instance, will have a classroom of children for whom she is responsible.

Mr. Ward: But the regular grade 3 teacher has not undertaken the necessary steps to obtain the skill to become a librarian. All that is exempted under this bill.

Mrs. Campbell: That is a misunderstanding. For many years, individual school boards and the Ministry of Education have encouraged teachers at all grade levels and in all subject areas to become better



qualified and more knowledgeable, so a grade 3 teacher, although she may seem to be nothing more or less than a grade 3 teacher, in fact can have many additional qualifications beyond the basic teacher qualification that allows her to be a grade 3 teacher. They would not come under the idea of additional responsibility or additional skills; they would be additional qualifications.

Mr. Ward: They would not come under a merit compensation plan free of gender bias?

Mrs. Campbell: A merit compensation plan?

Mr. Ward: Under section 7(c)?

Mrs. Campbell: No, not necessarily. We are simply talking about qualifications.

Mr. Ward: I am sorry; I do not want to enter into debate. I am just trying to clarify this. You are saying that two teachers may be doing the same work but have different levels of qualifications and are therefore paid at different levels.

Mrs. Campbell: Exactly. There could be four grade 3 teachers within a given school building, each with the same number of children in her class, but there could be a wide variance in the qualifications held by each of those persons. That is reflected in the teacher grid. Incidentally, they could be a mixture of male and female teachers. That does not enter into their placement on the grid.

Mr. Charlton: On this question of qualifications, presumably when a board pays a teacher additional money for additional qualifications, they are qualifications related to the teaching profession, not just anything a teacher decides to go out and study.

Mrs. Campbell: Presumably, but not necessarily. For instance, one of the basic complications at present for a teacher is a three-year university degree; that is, a bachelor of arts. Although it certainly provides background, depending on the courses chosen by the individual, it does not necessarily apply directly to the teaching job that person later has.

Mr. Charlton: No, but we are talking here about extra qualifications for which a board of education is going to pay a teacher more than another teacher supposedly doing the same job. Presumably, those qualifications are going to relate directly to the teaching profession.

Mrs. Campbell: Not necessarily.

Mr. Charlton: What kinds of qualifications do you pay extra for that are unrelated?

Mrs. Campbell: An accumulation of additional courses is taken by the teacher until they add to a certain number, which then moves him from one category, one placement on the grid, to the next. The subjects of those courses are at the teacher's choosing. There is merely an accumulation of a certain number of them and then he is automatically placed.

Mr. Charlton: But are there no guidelines as to what those courses can or cannot be?



Mrs. Campbell: No, there are not.

Mr. Charlton: Can I go out and decide to take a course in the history of comic books and you will pay me extra?

Mrs. Campbell: No, there are guidelines in that they have to be recognized courses--

Mr. Charlton: That is what I am trying to get at.

Mrs. Campbell: They have to be Ministry of Education or university courses. For instance, a geography teacher might decide to take a series of courses in something totally unrelated to the geography courses that he teaches at school, yet he would still be granted the additional qualification allowance for those courses.

Mr. Charlton: But they are courses that are set out by the board. If I am a teacher and I go and take a course outside those that are set out by the board, I am not going to get any extra pay for that.

Mrs. Campbell: No, that is not the way it works. I am not doing a very good job. Mr. Jakub, would you like to explain it?

Mr. Jakub: As our president has indicated, we have a salary grid that all teachers are paid on.

Mr. Charlton: I understand that.

Mr. Jakub: Part of that grid is dependent on the qualifications of an individual teacher and they are set out by various systems. In the elementary panel, a common system is the Qualifications Evaluation Council of Ontario system. In the secondary panel, the Ontario Secondary School Teachers' Federation, for example, has something called certification 7. It determines what category an individual teacher fits in. To look up the salary, all you have to do is look up the number of years of experience and, bingo, you have it.

Mr. Charlton: What I am trying to get at is that it is no different. You are trying to set yourselves out as a special case, and that is no different from what happens with any other employer who has different levels of qualification. That is exactly how it works, right through the private sector. If you have a set package of qualifications to achieve a certain pay level, that is what is intended under the sections of the legislation as it is set out.

Ms. Fish: Very quickly, the difficulty I had when you were expressing the grid system method of payment, which is what governs the pay raise, as being reason to be exempt, was that my understanding--it may be in error, so please correct me--is that the grid is, first of all, worked out with some teacher participation, and second, is gender-neutral. The placement on the grid that would govern payment has already had some input from employees--consider it that way--but more to the point is a gender-neutral basis of payment. If that is the case, I am at a loss to understand why you would be concerned about the impact of the legislation and would seek to be exempt from pay equity legislation that is trying to deal with gender-based differences in wages.

Mrs. Campbell: I guess our concern is based not on the fact that we

fear our grid is not gender-free, because historically, if there is one area of employment that has been equitable, it is the teaching profession. That is not our concern; that is not our fear. We do not see in the legislation, as it is presently formed, any address to the qualifications matter. Because a group of people is rarely taken down in its wage expectations, our fear is that without the qualifications aspect to that grid, everyone on his or her third year of experience of that grid, regardless of the additional qualifications he or she does or does not have, will move to the top level of compensation.

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Now we have a distinction among levels of qualifications within that third year, and that distinction leads to a difference in salary to the teachers. Without the qualifications differentiation, we feel there would be only one aspect to the grid, that is, years of experience, and everyone with the same years of experience would move to the top position on the grid.

Ms. Fish: I disagree with the interpretation of "skill."

Ms. Caplan: Would your concern be satisfied if the definition of skill included the term "qualifications"?

Mrs. Campbell: Yes, that is the concern we have. We would very much like to see something within the legislation that addresses the actual qualifications.

Ms. Caplan: The term "qualifications"?

Mrs. Campbell: That is right.

Ms. Caplan: I think the members of this committee believe the term "skill" at this point includes and refers to qualifications, but perhaps during clause by clause, we can take that into consideration.

Mrs. Campbell: We see them as two quite different aspects.

Mr. Chairman: Mr. Ward has promised to be very brief.

Mr. Charlton: We have another supplementary on this topic.

Ms. Gigantes: I have a supplementary on this topic.

Mr. Chairman: All right. We will go to Ms. Gigantes and then back to Mr. Ward.

Ms. Gigantes: If what you are telling us is that a geography teacher who takes a course in psychology has extra qualifications and is rated for that in terms of pay, I can certainly understand why you feel we may not understand "skill" in the same way you understand it in your grid. Coming from a family of teachers, I have a strong feeling that somebody who takes a course in psychology and teaches geography actually may be more skilled.

I honestly suggest that if you look at why you pay for those qualifications, it is because you assume that the qualifications reflect the skill of the teacher. Otherwise, you would not be paying more for them, and the teachers would not have won that right.

Mrs. Campbell: In response, because we are unclear of your

definition of skill, just as you are not too certain about our definition of qualification, I think that area needs to be clarified within the legislation.

Ms. Gigantes: I have no problem with it personally.

Mr. Chairman: If we do clarify that during clause by clause, as Ms. Caplan mentioned, would that satisfy your concern with respect to that area? I think we understand where you are coming from; it is a question of interpretation.

Mr. Parry: Our grid does not refer to the question of skill. Skill is a rather subjective assessment of someone's work and performance, I presume, and the level to which he can present those skills. A qualification is easily identifiable on a grid because it is the attainment of something which is deemed by another institution: as Mr. Charlton said, a university, for example, or another higher education institution which offers a recognition of attainment of a qualification. That movement happens on the grid rather automatically. It is not a question of interpreting someone's skill. When you use the word "skill," do you equate skill and qualifications?

Ms. Gigantes: You are paying for those qualifications. You must suspect that they reflect something worth paying for.

Mr. Parry: With respect, the teachers do not use the word "skill." The teachers and school boards have agreed to the word "qualification."

Ms. Gigantes: You are paying for the qualifications. If you do not believe they represent something of value in terms of the skills of the employee, I do not know why you are paying for them.

Mr. Parry: I am not disputing that. I am simply trying to ask the question or find out the answers. We have tried to determine in legislation whether skill and qualification are absolutely identical. Are you suggesting they are identical in your view?

Ms. Gigantes: I am suggesting you pay for them as if they are.

Mr. Chairman: I am suggesting we can make the amendment and change it to your satisfaction. I think there is agreement among those of us sitting around this table that it is a semantic argument at this point. I do not mean to say it is an unimportant argument but, to clarify your position, I think we can do that to satisfy your concerns, because nobody is disagreeing with you.

Mr. Phillips: We would appreciate that, because in the past we have had some difficulties with interpretations of one or two words within legislation that have caused great problems.

Mr. Chairman: We do too on occasion. Mr. Ward wants to clarify this whole thing with a few succinct words of information.

Mr. Ward: I did not want to talk about it at all; I wanted to raise another point. I think it has been a helpful discussion with regard to the qualifications, but I have a real serious concern with your brief and the suggestion that you should be exempted from this in terms of how it applies to other elements that are under the control of the public school boards throughout this province. The intent of the legislation is to address gender-based wage discrimination as it may apply to your caretakers, cafeteria staff, etc.



We have talked at length about the grid and the systems you have for teacher evaluation. Having in place those sophisticated wage scales, etc., can you tell me why you do not believe you can put in place a pay equity plan that applies to the other employees in your jurisdiction? I just do not understand that.

Mrs. Campbell: That is not our view at all. The opening paragraph of our paper says we do not oppose the philosophy of pay equity. We have three main concerns with Bill 154: one, the qualifications aspect for the teachers on the grid; two, the time line; and three, the cross-bargaining units.

Mr. Ward: If I am wrong, fine. My impression was that you were saying you could not have in place within a period of one year a pay equity plan to address those other problems.

Mrs. Campbell: Sorry, two years is what we were requesting. We believe there is a time line of two years to five years for other employers. We feel that because of the size of some of the school boards in this province, we should be allowed at least two years, the minimum period that is allowed to other groups. It is a very complex undertaking for us as well.

We have a really diverse group of people working for school boards, at least as diverse as most private companies, and we feel we need that additional year to do a good job in setting up the plan we need. We are all going to undertake that with whatever advice we can have and with whatever input we can receive from our employees, but still and all, we need that additional time.

Ms. Gigantes: I am interested, because other people who have represented either employers or employees in the public sector have addressed the question of payment. How is the organization going to afford to implement equal pay for work of equal value? You have not raised that with us.

Mrs. Campbell: Funding for school board operation comes from two sources: one, from the Ministry of Education and, two, from locally raised taxes. We assume the additional funding to meet the implications of Bill 154 will have to come from a combination of those two sources.

Ms. Gigantes: How many of your employees would be in a nonunion situation? This is not what I wanted to ask. How many employees of your school board--I do not know how you could provide the figures--would be teaching staff and how many would be nonteaching staff?

Mrs. Campbell: Mr. Jakub is the expert on that. Probably 75 per cent to 80 per cent would be teaching staff and the rest would be nonteaching. Of those, I have no idea of the portion that would be nonunionized. I suspect at this time it would be very few. On most school boards, nonacademic staff is unionized.

Ms. Gigantes: In essence, you would be looking at equal pay planning for about 20 per cent of your employees.

Mrs. Campbell: Yes, approximately.

Mr. Chairman: Thank you very much. We appreciate your representations to the committee, your brief and the time you took to respond to our questions.

Mrs. Campbell: Thank you. we appreciate your consideration.

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Mr. Chairman:-I would like to welcome the United Steelworkers of America. We appreciate your coming before us to give us your views on Bill 154. Perhaps you could introduce yourself, sir, and then the members of your delegation.

#### UNITED STEELWORKERS OF AMERICA

Mr. Gerard: Thank you very much, Mr. Chairman. My name is Leo Gerard. I am the director of the United Steelworkers of America, District 6, Ontario. The people with me are, on my far left, Brian Shell, our Canadian counsel. Next to Brian is Ken Signoretti, staff representative and vice-president of the Labour Council of Metropolitan Toronto. Next to Ken is Doug Olthius, one of our researchers, and on my right is Kathy Treadwell, a steward in one of our plants in Mississauga.

Let me begin, ladies and gentlemen, by stating how pleased I am to be able to be here today to present the concerns of my union, the United Steelworkers of America.

The United Steelworkers of America is the largest private sector union in Canada. We represent close to 90,000 working men and women in many different industries. Steelworkers are found not only in what people would traditionally think of as the large steel mills and mines of this province, but also in hundreds of smaller manufacturing plants, which produce everything from washing machines to baby food, in offices and service industries, including nursing homes.

Almost one year ago, I had the opportunity to speak before the consultation panel on pay equity. At that time, I said that the United Steelworkers of America wholeheartedly supported the government of Ontario's commitment to legislate equal pay for work of equal value, a commitment which was made in the New Democratic Party-Liberal accord. In my union, we continue to support very strongly pay equity legislation. We feel it is essential if we are to ensure that the working men and women of this province, and not just the working men, receive fair wages. As far as my union is concerned, there is a question of economic justice.

At the consultation panel, I also made it very clear that my union would not accept legislation that delayed pay equity or was riddled with exceptions, limitations and loopholes. Today, almost one year later, that is precisely what we feel we are facing with Bill 154.

Despite the very clear message that labour unions and women's groups delivered to that panel, Bill 154 is a shadow of pay equity. It is not pay equity. In taking this approach, it is clear the government has given in to the massive pressure campaign mounted by, in some cases, reactionary business interests and that the government has betrayed the trust placed in it by working men and women who are concerned about pay equity. It is an approach which lends support to our suspicion that the whole consultative process was nothing more than a delaying tactic designed to give the illusion of government action.

It appears to us that the National Citizens' Coalition and its right-wing business allies have this government running scared. Business opposition to pay equity appears to be forcing the government to back away from its principles. Let me assure the government that it should have nothing



to fear. The working people of this province believe in economic justice for working women. We are more than ready to take on the business lobbyists on this issue.

Let me also say that I consider the business lobby to be disgraceful. Do they really think that by buying full-page newspaper ads they can scare people, with visions of the pay police, into voting against what they know is right? Do they really think the legal costs incurred by businesses that are fighting to preserve the right to pay women less than they are worth mean anything when measured against the massive subsidies women give to business every day? Most of all, do they seriously want us to believe that women are imagining they are often paid less than their male counterparts and that there is no wage gap?

We know a wage gap between male and female workers exists; we know it from the thousands of individual women who experience it every day. If they are not believable, we now have research studies which show that the wages of full-time female workers are consistently lower than those of male workers. This is the the injustice that the pay equity legislation must address.

In regard to timing and implementation, the entire labour movement, including the United Steelworkers of America, has demanded legislation that will quickly lead to wage adjustments for pay equity. We have repeatedly said that working women of this province have waited long enough and that they should wait no longer to be satisfied with promises. This is exactly what has happened in Bill 154. Women are again being made to wait, in some cases, perhaps for ever.

There are two fundamental problems. First, far too much time will pass before the first equity wage adjustment must be made. Second, there is absolutely no deadline for the final achievement of pay equity. The United Steelworkers of America is recommending that Bill 154 be amended to provide that pay equity wage adjustments begin no later than two years from the effective date of the legislation; that wage adjustments be made retroactive to the effective date of the legislation; and that all pay equity wage adjustments are completed within five years.

It appears that the strength of the business lobby is reflected not only in the timing of Bill 154, but also in its substance. The bill is riddled with exceptions, limitations and loopholes. They must be deleted. If they are not, far too many women will not be covered, job comparisons will be far too narrow and too many reasons for unjust wage practices will receive legal sanction. If these things are not changed, this government will be passing into law a bill that will not lead to pay equity.

Bill 154 is built around an extremely narrow approach to pay equity. For lack of a better label, let me call it the laboratory approach. What is the laboratory approach to pay equity? In laboratories, the method researchers use in their efforts to discover solutions to problems is to find the one key factor causing the problem, isolate it and then neutralize it. Different experiments are conducted. In each experiment, every factor is duplicated exactly, except one. In this way, researchers can see in a controlled environment exactly what effect this one factor has on the whole.

Although I do not believe the current pay equity legislation should be considered an experiment in any way, there are certain similarities between the laboratory approach and this government's approach to pay equity. Let me explain. The objective of pay equity legislation is to design a law that will



eliminate the wage gap between male and female workers that results from the fact that women hold or have traditionally held certain jobs, the wage gap that is due entirely to the fact that a woman and not a man is doing the job.

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What kind of law will allow that objective to be reached? The government has introduced a narrow law that tries to isolate one factor, gender, and prohibit wage discrimination owing to that one fact. The method used is to ask the counter-factual or hypothetical question, if a man was doing this job, how much would he be paid, or, alternatively, if men had traditionally done this kind of work, how much would the job pay?

It is not difficult to answer these questions. We simply compare jobs that involve equal amounts of skill, effort and responsibility. This comparison will show often that women are paid less than men. But the government is not satisfied; it wants to ensure that the wage difference is really owing to the fact that a woman is holding the job and not to any other factors.

To isolate the one fact it is concerned with, gender, the government wants to hold all other factors equal. It begins to construct a laboratory, which is where the difficulties begin and Bill 154 breaks down.

Is the difference in wages simply owing to the fact that one employer is more generous than another? To eliminate this possible explanation, the government has decided to limit job comparisons to the same employer.

Is the difference simply owing to a cost-of-living differential between two different areas? To eliminate this potential explanation, Bill 154 limits job comparisons to the same region or municipality.

Is the difference owing to the fact that the employer made a mistake in the past and overpaid his male workers? The government eliminates this possibility by giving its blessing to red-circling.

Is the difference owing to a temporary skill shortage which drives up male or female wages? Allowances are made for that.

Is the difference owing to the fact that some employees are organized and others are not? Comparisons of union jobs are limited to other union jobs, comparisons of nonunion jobs are limited to nonunion jobs and bargaining strength is deemed to be an acceptable reason for the re-emergence of a wage gap.

If there are two possible job comparisons between male and female jobs, how can the government be sure it has isolated the key factor, gender? Bill 154 makes sure the job comparison focuses on the lowest-paid male job.

Is the wage difference owing to the fact that a small employer simply cannot pay? Firms which employ fewer than 10 employees have been exempted.

Is the difference owing to the fact that the woman does not work on a permanent basis? Women employees called "casual" are deprived of coverage.

I can go on, but you see the problem. The government is trying to construct a laboratory out of real life. It recognizes the need to compare male and female jobs but wants to make sure everything about the comparison is

identical, except one factor: it wants to isolate gender. We end up with a law like Bill 154, which is so riddled with exceptions that it cannot deliver what we initially set out to achieve, to eliminate the wage gap.

I believe we have to admit we cannot be scientific on this issue. There is a wage gap, it is not just and it must be eliminated. We also know the government's laboratory approach will not do it. The laboratory approach is much too narrow. It focuses only on what you might call the biological or physical attributes of a woman. Is the wage gap owing to the form and shape of the person doing the job? That is about as useful as focusing on the colour of eyes, height or the colour of hair. This approach ignores other social realities which have moulded society's image of women and the economic reality of women's working lives.

For example, consider the wage gap which may be owing to differences in bargaining strength. It is true that this gap is not, strictly speaking, owing to the fact that a woman holds the job. But it is also true that women have had great difficulty in getting organized in unions. This is the reality, and given that, it makes no sense to separate bargaining strength from gender to disallow wage discrimination based on gender, but allow it for bargaining strength.

To take another example, consider women as casual, part-time workers. The wage gap that results from this may not, strictly speaking, result from a woman's gender; however, it is true that women are still often primarily responsible for child rearing. In the absence of an adequate system of day care, this responsibility may well lead to casual part-time employment. Given this reality, it again makes no sense to try to separate the wage gap due strictly to gender from part-time work.

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Again, I could go on with the examples. But you will see the point: The government's laboratory approach of trying to isolate gender breaks down in the real world. The gap is the result of many interrelated factors. If women had equal opportunities in education, if women were able to be more easily organized, if there was an adequate day care system and if it were easier for women to find nontraditional jobs, then perhaps the laboratory approach would be more appropriate. We have not moved quickly enough in these areas. As a result, what is needed today is a strong pay equity law.

The United Steelworkers are therefore recommending that Bill 154 be amended so that:

1. All women will be covered by the act, regardless of the size of the firm, and inclusive of all women in casual positions.
2. The following exclusions be deleted: temporary employee training, merit plans, red-circling and skills shortages.
3. That section 7(2), which allows for wage differences to re-emerge after pay equity has been momentarily established if they are related to bargaining strength, be deleted.
4. Comparisons between jobs in different bargaining units of the same employer be permitted even where comparable jobs exist within the bargaining unit.



The first three recommendations stand on their own, but a comment may be in order regarding the fourth. The fourth recommendation is necessary because we have found that among the firms organized by our union, the wage inequities between men and women are found more often between different bargaining units, rather than within the same bargaining unit.

For example, most of the clerical and technical personnel in an office will be paid according to the same salary scale. Job comparisons between jobs within that bargaining unit will likely not show serious wage inequities. However, if jobs in the office unit were compared with jobs in the plant bargaining unit, a wage gap between male and female workers will likely be found. When workers in the office and plant are not in the same bargaining unit, Bill 154, as it now stands, will not be of much help in closing the wage gap. That is why the law must allow for comparison between bargaining units.

There are additional problems with Bill 154. We can foresee several weaknesses in the bill which would allow pay equity to be short-circuited. There are seven further areas where we feel the bill must be amended.

Due to the time constraint, I will briefly run through those.

Paying for past injustices: We know many employers oppose pay equity. We also know that many employers who will now be forced to pay female workers fair wages will attempt to empty the pockets of other workers in order to finance pay equity. We think that is wrong.

The steelworkers are recommending that Bill 154 be amended to prohibit employers from freezing wages, or holding back wage increases which would normally have been coming, in order to achieve pay equity.

In making this recommendation we realize that such a prohibition would be difficult to enforce, because it will sometimes be difficult to determine what the normal wage increase would have been. It is for this reason that we are supporting the recommendation made by the Ontario Federation of Labour and others that employers be obligated to create separate pay equity funds equal to three per cent of the previous year's wage costs, out of which pay equity wage adjustments would be made.

Bargaining pay equity: We know many employers will try to destroy pay equity programs by making them another bargaining chip at the negotiating table. In order to avoid this, it is essential that the legislation require that bargaining for pay equity plans take place separately and apart from the regular negotiations process if either the union or the employer requests it.

Unions in firms of fewer than 100 employees: Working people must often fight long and hard in order to join together in a union. This is true regardless of the number of people in the bargaining unit, and we can see no compelling reason why the union should be excluded from the pay equity process in firms which employ less than 100 people. Unions in plants of all sizes demand to be involved in negotiating a pay equity plan, and the law must provide for this.

Therefore, the steelworkers are recommending that Bill 154 be amended to provide that, in all cases where the work place is unionized, it must be mandatory for pay equity plans to be negotiated between the union and the employer.



Right to information: If pay equity legislation is to have any meaning whatever, workers and unions must have the right to gain access to all information that is necessary to negotiate and implement a pay equity plan. If workers do not have the knowledge of company wage scales and wage policies, their ability to utilize the legislation will be restricted. Therefore, the steelworkers are recommending that Bill 154 be amended to provide unions and individual workers the right of access to all information that may be necessary for the purposes of pay equity.

Pay equity plan: Steelworkers support those sections of Bill 154 which set out and describe pay equity plans. However, there is no provision in the bill that would require employers to file copies of these plans with the pay equity commission. In our view, it would be advisable to introduce such a provision. A system could be developed, such as the one that now exists at the Pension Commission of Ontario, that requires that copies of all pension plans be registered and filed. Therefore, the steelworkers are recommending that Bill 154 be amended to require employers to file copies of pay equity plans with the pay equity commission not more than 90 days after they have been finalized.

The duty of fair representation: The final section of Bill 154 on which I would like to comment is the liability section. According to subsection 6(2), a union will be liable if it agrees to compensation practices that are in contravention of the act. The difficulty with this is the following: What happens if, after a local union has agreed to a pay equity plan, it is found that the plan is in contravention of the act? Should the union be held liable? We do not think so.

What about cases where the union does have full information and knows the score? I can tell you that in my union we will do everything we can to assist locals in negotiating just pay equity plans. However, sometimes, due to the obstinacy of the employer, I am sure we will not be successful. The wage gap and the wage practices of a particular work place will continue to be in contravention of the law. In such situations, I do not believe it is proper that the union and union officers be held responsible and liable to penalties. Currently, in this society, it is the employer who has the final say at the work place, and where the employer fails to comply with the act, the employer, and the employer alone, should be held liable.

On the other hand, I do recognize that there may be a few occasions, on which some local unions do not properly represent their female members. The fact that the employer has final decision-making power should not be an excuse to sit on our hands and do nothing. A balance must be found between these two realities. The best way of doing that is to amend Bill 154 by introducing language similar to that in the Ontario Labour Relations Act, which requires unions to represent workers fairly.

In conclusion, the United Steelworkers of America continues to support strongly pay equity legislation. However, Bill 154 is seriously flawed. We must not allow ourselves to be swayed by business and reactionary arguments. Major amendments must be made, first, in order to ensure that pay equity is not postponed far into the future, and second, to eliminate the many exceptions, limitations and loopholes that now exist in the bill.

Legislation which is based on a laboratory-like approach to pay equity is certainly not good enough. The steelworkers are calling for a strong and broad piece of legislation which will truly come to grips with the problems of the low wages for women's work. Armed with such legislation, women will, by

themselves and through their unions, be able to obtain the fair wages that they have been previously denied.

Mr. Chairman: Thank you. Are there any other comments from members of your delegation? We can move on to questions.

Mr. Polsinelli: Thank you for your presentation. You state that the United Steelworkers of America is the largest private sector union in Ontario, representing over 90,000 employees. Of that 90,000, how many are women? Do you have that type of statistic?

Mr. Gerard: Off the top of my head, I could say well in excess of 10,000.

Mr. Polsinelli: Can you tell me also how many bargaining units these 90,000 employees represent?

Mr. Gerard: This week, 700; maybe 710 by next week.

Mr. Polsinelli: Congratulations. Of the 700 or so bargaining units, you are in the process of negotiating, more or less, 700 collective agreements every year. Is that right?

Mr. Gerard: Not every year. We negotiate 700 collective agreements when the renewals come. We are always negotiating.

Mr. Polsinelli: Generally, what is the life of a collective agreement? What is the length of the term?

Mr. Gerard: The majority are two-year agreements, with some three-year agreements. There is an occasional one-year agreement.

Mr. Polsinelli: In how many of the 700 or so collective agreements your union has negotiated have you been successful in negotiating some type of job-evaluation scheme?

Mr. Gerard: I guess the fairest answer is to say quite a few in the longer, more established collective agreements, such as the ones in mines, steel and the heavy industries, which we could consider our traditional jurisdiction for 25 or 30 years. In more recent times when we have organized in female and ethnic wage ghettos in the inner city of Toronto, very few. Employers use tactics that make it very hard to bargain those kinds of things. We have been successful in traditional, male-dominated work places, and we have not been successful in the female and ethnic wage ghettos.

Mr. Polsinelli: Do you have any idea of numbers? Do you know how many you have negotiated and how many you have not? This is reminiscent of certain responses I have heard in the Legislature. I think Ms. Gigantes is familiar with that type of response, "before the full moon," "in the fullness of time," that kind of stuff. Do you have any idea in terms of numbers how many agreements you have actually negotiated?

Mr. Gerard: No. In the traditional areas, we have probably been successful in excess of 50 per cent of the negotiations; in what I call the nontraditional, female wage ghettos, employers have been able to intimidate the members of the bargaining unit, so we have not been successful. That is why we need pay equity legislation.



Mr. Polsinelli: You have not been successful in what you call the traditional female wage ghettos. In those establishments where you have been successful in negotiating a job evaluation scheme, do you feel a wage gap still exists?

Mr. Gerard: Yes. Part of the reason for that is that those job evaluation programs were put together based on a model called the co-operative wage study program, which was generated out of the steel industry. It was later amended to take into account clerical workers, mines and fabricating plants, which were traditionally male-dominated operations, so I would say there is still some wage inequity built into that system. In fact, we have done some work to see whether we can revise that system so that when we get into bargaining, we can try to amend it.

Mr. Polsinelli: Apart from the general wage inequity, do your job evaluation schemes in any way try to identify some type of gender-based wage gap?

Mr. Gerard: As I said, not in the traditional sense. They were developed in steel mills and mines where, until recently, employers did not even hire women. Certainly now if we can convince them to hire some women, we will change it.

Mr. Polsinelli: My last comment: One of the criticisms I have heard regarding this bill is that, effectively, what the government is doing in unionized establishments is taking over the role of the unions and doing the unions' job for them. How would you respond to that?

Mr. Gerard: You are not doing it very well.

Mr. Polsinelli: This is the criticism I have heard. Would you say it is a fair criticism?

Mr. Gerard: No. I would say I would much rather see you strengthen the bill so that the union could do its job well. We would not need the government.

Mr. Polsinelli: The criticism I heard was that, effectively, this bill would be doing the union's job. The fellow who levied that criticism thought it was the responsibility of the union and the unionized establishment to develop through the collective bargaining process some type of job evaluation scheme that would take care of not just the gender-based discrimination but also the whole question of wage inequities.

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Mr. Gerard: I have answered as squarely as I can your questions leading up to that. Somebody who accuses us or the government of that in this bill has probably spent too much time outside the real world. As I said, in some of the longer, more established bargaining units, we have been successful. If people want to look at reality, we are dealing with--as I call them--ethnic wage ghettos and female wage ghettos, and frankly we have not been successful. We have not been able to do it because of all kinds of realities of the work place. I do not see any legislation that is going to bring about the remedy of some injustice as doing the unions' work.

As I understand it, you are the parliamentary assistant to the Minister of Labour (Mr. Wrye), and I could say to you that if you bring in occupational



health and safety legislation, somebody out there may say you are doing the unions' job because we should bargain on people's lives. We abandoned that a long time ago, just as I think people should abandon it in regard to women having been treated unfairly and having been exploited for 1,987 years. If someone is going to bring in legislation to right a wrong, I do not think we should be looking for scapegoats. The legislation should be brought in and brought in properly.

Mr. Polsinelli: Thank you for your response. I am going to send him a copy of that.

Ms. Gigantes: Thank you for your presentation and your brief. It addresses some of the questions put before us before by people who took a different view from you, and I would like to chat with you about that. But first, to ask a question along the same lines as Mr. Polsinelli, how many of the 700 bargaining units you represent might be called small employers, those with, say, under 100 or under 50 employees?

Mr. Gerard: It is about 450; I am guessing.

Ms. Gigantes: How many employees would that represent, roughly?

Mr. Gerard: I am trying to figure in my head the large bargaining units. I think that if I were to try and break it down even more closely, probably 450 would have between 100 people and 50 people, and probably a whole bunch more. The reality is that of the 700 bargaining units, the easiest way to put it to you is that we may have five bargaining units with 1,000 or more members. People have this concept of great big, huge bargaining units. The reality of organizing is that nine out of 10 bargaining units organized are under 100.

Ms. Gigantes: In fact, your union is quite representative of the business structure of Ontario in that you have a lot of people in a large employer field and a lot of people in what we call a small employer field, those employers with fewer than 100 employees.

Mr. Gerard: Yes. That number is a guesstimate. It may even be 500. I do not count those things every day. The reality is that the one number I do know is that there are five bargaining units with more than 1,000 members out of a total of 90,000 members.

Mr. Shell: There is another number we know that might be of assistance: The average bargaining unit size is under 100 employees.

Mr. Gerard: For all unions.

Mr. Shell: And in the Steelworkers.

Ms. Gigantes: You are saying that most of the workers represented by unions will not have an equal pay plan under Bill 154, as it is now?

Mr. Shell: You have got it. That was quick.

Ms. Gigantes: If we get equal pay plans and the process of union input into equal pay plans, as you are suggesting, is it going to cost you, as a union?

Mr. Gerard: Do that again.

Ms. Gigantes: Providing support, assistance and so on.

Mr. Gerard: Put the first part of the question again. If we get an equal pay plan--

Ms. Gigantes: The way you are suggesting for all unionized work places.

Mr. Gerard: Sure it will cost us.

Ms. Gigantes: Have you put any figure on that in your mind?

Mr. Gerard: No. We will spend whatever has to be spent to make the thing work. We will use the resources available to train people to negotiate, to do all the things that have to be done, just as we do under the Human Rights Code and the Employment Standards Act. As we see it, it is part of our obligation in representing our membership.

Ms. Gigantes: We had a presentation a couple of days ago by John Rives of Peat, Marwick and Partners. He suggested to us that in the establishment of the job evaluation plan to which you referred earlier--I do not know if it is a--

Interjection.

Ms. Gigantes: Yes, that in fact there had been a recognition. I have tried to get in touch with him since to understand exactly what he was talking about, but have not been able to reach him yet. I understood from his presentation that he was referring to a system that had been devised many years back. Can you put a date on it?

Mr. Gerard: The co-operative wage study program originally was born out of the war years, but it has been updated and adjusted several times since. As I said, I do not think it is unfair for me to tell you that it is a plan that was devised when our union was primarily in male-dominated sectors.

Ms. Gigantes: Does it provide for cross-bargaining-unit evaluations--comparisons?

Mr. Gerard: It does in the sense that those were what we call benchmark jobs. You would take a job in an industry and you benchmark it according to that industry. In that sense, it does.

Ms. Gigantes: He made a very strong pitch to us that in the legislation, we should allow only for job comparisons that were within bargaining units.

Mr. Gerard: That is crazy. We may have a bargaining unit that is primarily office and clerical people. We may have another bargaining unit that is primarily production and maintenance. The office bargaining unit would have, as an example, 20 per cent of the membership of the production and maintenance unit. If the production and maintenance unit has a janitor getting paid \$12 an hour and a secretary is getting paid \$7 an hour, I guess that takes you back to our approach of saying the government's approach is a laboratory approach.

The fact that the majority of the people working in the office and clerical unit may be women and the fact that they did not have any bargaining

power have been used to exploit them and to pay them a rate that would be substantially less than the janitor's rate. You would need to have, at the very minimum, cross-bargaining-unit comparisons.

Ms. Gigantes: Do you have situations in which you represent what may be called the traditional male employee group, while inside in the office, as opposed to the warehouse or the production centre, there is unorganized female staff?

Mr. Gerard: Unorganized?

Ms. Gigantes: Yes.

Mr. Gerard: Lots.

Ms. Gigantes: Would you have any problem, from the union point of view, if those unorganized women staff were being cross-compared to people in your union?

Mr. Gerard: No, I would not have any problem. If we did that, most of them would have two ways of getting it remedied, joining the union or through pay equity; they are being exploited.

Ms. Gigantes: We also had it suggested to us, I believe it was by the Retail Council of Canada--if I am wrong, I hope somebody will correct me--that if we did not confine job comparisons within the bargaining unit, what we would find employers doing is setting up different corporate entities for, say, the warehouse as opposed to the office.

Mr. Gerard: The reality is that employers may do that. The legislation should prohibit them from doing it. We have difficulties with employers that, under a scope provision of a recognition clause or certification at the labour board, will move the plant across the street to try to avoid the certification. There is no doubt that the Retail Council is telling you the truth; employers would do that. Legislation should be brought in to prohibit that.

Mr. Chairman: Are there further questions from members of the committee? There being none, I thank you for your time before the committee, for your brief and also for responding to the questions.

Mr. Gerard: Thank you.

The committee adjourned at 4:48 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, MARCH 4, 1987

Morning Sitting

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Knight, D. S. (Halton-Burlington L)  
O'Connor, T. P. (Oakville PC)  
Partington, P. (Brock PC)  
Polsinelli, C. (Yorkview L)  
Rowe, W. E. (Simcoe Centre PC)  
Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor  
Dean, G. H. (Wentworth PC) for Mr. Rowe  
Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Ontario Advisory Council on Women's Issues:

Kerr, S., Vice-President  
Ramkhalawansingh, C., Chair, Employment Committee  
Vianna, B. W., Executive Officer

From the Association of Municipalities of Ontario:

Cooper, H., Member, Labour Relations Services; Alderman, City of Kingston  
Kerur, S., Manager, Labour Relations Services

From the Ontario Women's Directorate:

Alboim, N., Director, Policy and Research Branch

Individual Presentation:

Yule, E. A., Job Evaluation Consultant

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, March 4, 1987

The committee met at 10:11 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning, committee members. My apologies to the delegation that is coming before us for starting a bit late. I would now like to invite the Ontario Advisory Council on Women's Issues to come forward. Perhaps you can take a seat in the front, ladies. Once you are comfortably seated, I will ask you to introduce yourselves. When you are ready, you may carry on and present your material to us. You have approximately half an hour to make your presentation. I would like you to leave some time near the end of the presentation--I do not know how long that will take--so the committee can raise any questions it might have with respect to the issues you bring before us.

On behalf of the committee, let me welcome you to our deliberations. We look forward to hearing your comments.

ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES

Ms. Kerr: My name is Sandra Kerr. I am the vice-president of the Ontario Advisory Council on Women's Issues. Our president is currently in the north visiting a variety of native centres in the province. Today, we have with us two of our members. One is a council member who is the chair of our employment committee. She is Ceta Ramkhalawansingh. Ceta was instrumental in working with the committee in preparing a pay equity brief, which you have before you. Also with us today is Bridget Vianna. She is the executive director of the council staff members.

I will not go into the background of the advisory council since I know you are quite familiar with its mandate and responsibilities, but I do want to set the scene for you in terms of how we have come to present our brief. We have come before this committee several times actually, but to place the setting a little more accurately for you, we visit throughout the province during our various meetings and consultations and we continually hear from women's groups and organizations within the various centres on the issue of pay equity.

Last year, we presented a green paper in response to the government's green paper. We circulated it to some 4,000 or 5,000 members on our mailing list. After we presented that green paper, we asked for comments from our mailing list and anyone who was interested. We invited them not only to submit briefs but also to come to a pay equity forum, which we had a year ago this week on March 7.

As well, we invited all the members of Parliament to come to the breakfast and the session and to bring a member from their constituencies to



that public forum. You might be interested to know that about 60 of the members of Parliament took advantage of that and came to the breakfast and took part in the day session, bringing a representative with them. Unfortunately, only three members of this committee took part in that, but at any rate, they will be familiar with what we did during the day, which was to hear various presentations from a great variety of groups from throughout the province, interestingly enough.

In view of the time constraint and the fact that you have before you a copy of our brief, we would like to invite Ceta to summarize the brief for you. This brief was the result of that public forum. It has been presented to the government and it has been presented to this committee before, but there are several highlights we would like to make you aware of today as a result of your deliberations.

Ms. Ramkhalawansingh: Since the establishment of the Ontario Advisory Council on Women's Issues, and under the presidency of Laura Sabia, the council has given advice to the government on a continual basis that pay equity laws should be introduced to reduce the wage gap between men and women paid workers. This advice has been given continually for the past decade.

As a highlight to that, I would like to note that on my way up here this morning, the taxicab driver asked me whether I was coming up to watch the action. I said: "I am not really sure what action is going to take place because we have been going and talking for a long time. We are still waiting for action to occur." We are hopeful that out of this process some action will be taken by the government.

As Ms. Kerr said, a few months ago we were before this committee. Some members are the same. At that time we gave you the benefit of our research and our consultation with women's organizations as well as a very detailed analysis of Bill 105. More importantly, what we did at that time was to enunciate the principles we believe should be contained in any equal pay laws.

It is not our intent this morning to restate in detail what we outlined to you last November, I believe it was. Instead, what we wish to do is to reiterate the main points and to identify critical issues that must be addressed.

From our discussions, there is without a doubt unanimity among women's organizations and those organizations that work towards the achievement of sex equality that the idea for pay equity legislation has come, and indeed, may in fact be gone. You need to give effect to this proposed legislation before the situation becomes so serious that even more stringent steps will be required.

It is the policy of the Ontario Advisory Council on Women's Issues that the fundamental principles that should be embodied in pay equity law require that it be a labour standard available to all workers, individuals and groups alike; that gender predominance should not be a primary premise of the legislation; that there should be no exclusions from that legislation; and that it should contain a very broad definition of establishment. Further, the proposed Pay Equity Commission of Ontario should have an arm's-length relationship to the government, be accountable to the House and have the powers to initiate its own investigations.

We also noted in our brief to you that the reduction of the wage gap will not come about merely through these proposed pay equity laws. To do so, it is necessary to accompany the proposed legislation with comprehensive

employment equity legislation as well as changes to the labour laws that will facilitate the unionization of women workers. These two additions are necessary because they will take us beyond what we view as very minimal standards in Bill 154.

In addition, we wish to see a full review of the Employment Standards Act to look at exclusions regarding at least the wage rate that takes place on the basis of piece rates. This particularly applies in the garment industry where so many women work, in particular immigrant and minority women, as well as to some other aspects of the employment standards legislation with respect to seasonal work. There are large numbers of women who work in the service and tourist industries.

Indeed, with respect to the Employment Standards Act, we wish to highlight the shocking situation that continues to exist regarding live-in domestic workers who have no access to either overtime pay or protections regarding maximum hours of work. This is a pay equity matter for a large group of women, 75,000 of whom are in Ontario and many of whom are visible minority women. We have heard about proposals from the Ministry of Labour and we have also heard that proposals regarding that particular matter, domestic workers, are stuck at the cabinet level. We certainly hope it is on the agenda of today's meeting of the cabinet.

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We reviewed Bill 154, the proposal, as interim legislation only. We need to have legislation in this province for all workers, those workers who are presently considered by Bill 105 as well as those with fewer than 10 employees, that category of workers. They should be covered at least by a complaint approach under Bill 154 and legislation should also be available to those workers who will not be covered by gender predominance. Again, that issue of the legislation being available to all workers is critical.

The proposed pay equity commission should be required to conduct a review of the impact of gender predominance guidelines if the bill is to proceed as it is. Methods for improving all-female establishments such as child care centres must be devised. We have suggested in our own brief a couple of ways of doing this, such as using municipal standards, municipal centres as one standard, as well as comparing with male-only establishments.

With respect to Bill 154, subsection 7(2) regarding the use of collectively bargained settlements is an excuse for continuing wage discrimination that should be dropped, because if the premise of the bill is to include unions as well as employers in a discussion of how pay equity should be proposed, that section does not belong in this bill.

With respect to those establishments with fewer than 10 employees, we believe that the government and this committee should give consideration to reintroducing the principles that were outlined in the former Bill 141, which proposed a composite test under the Employment Standards Act. We cannot have legislation on the one hand that speaks to a composite test and have other legislation that does not include that as a principle. We are suggesting that perhaps one way of dealing with the fewer than 10 employees is that amendment to the Employment Standards Act should be introduced.

We urge this committee to go forward. We urged you to go forward yesterday. We urged you to go forward last month. We urged you to go forward two years ago. We view this bill as a step forward because it is proactive.



Although it is a very tiny step, it is at least forward and not backwards. That summarizes the direction we have proposed in our brief to you and we will be happy to answer any questions you have.

Mr. Stevenson: You mentioned the need for legislation to facilitate the unionization of women workers. In what sectors right now is there a strong demand for unionization of women workers that is not being satisfied because of situations in the work place or situations in legislation?

Ms. Ramkhalawansingh: I cannot give you a specific answer to that because we did not conduct a specific study on that particular issue. In looking at the various methods that are available to reduce the wage gap and various strategies that have been attempted in various places, when you look at organizations that are unionized and those that are not, you observe a much lower wage gap. If the intent is to reduce that wage gap, one of the benefits of unionization will be that the wage gap be reduced. I do not have a specific answer regarding research because we did not conduct that kind of detailed research.

Mr. Stevenson: Do you have concern that legislation in Ontario regarding the formation of bargaining groups and so on is lagging that of other jurisdictions and therefore needs to be brought up to them or are you saying that, regardless of where we stand compared to others, we need more?

Ms. Ramkhalawansingh: The latter.

Mr. Stevenson: Okay. You mentioned your recommendations for section 7. That passed very quickly and I am not sure--

Ms. Ramkhalawansingh: This brief was prepared prior to the introduction of Bill 154. I just made a comment regarding subsection 7(2).

Mr. Stevenson: Will you please go back over that slowly so I will understand the point you are making?

Ms. Ramkhalawansingh: Not being the drafter of this legislation, I can only tell you how we read it and what we thought it meant. The subsection says, "After pay equity has been achieved in an establishment, this act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength." There is implicit acceptance that if you can prove that collective bargaining itself produced a disparity, it is acceptable. That does not make sense to us.

Mr. Stevenson: As I understand that, it is bargaining strength after a pay equity situation is established. If it is deemed that some differences reappear--

Ms. Ramkhalawansingh: That it is acceptable? We are saying that is not acceptable. You could say, "We will achieve equality and any differences that appear after that are acceptable." It does not follow that those differences should be allowed to be reintroduced at the very end.

Ms. Caplan: Even if they were not gender-biased? If it can be shown that they were not gender-biased as a result of the collective-bargaining process, it would seem to me that would be a protection of a collective-bargaining process.



Ms. Ramkhalawansingh: Because there are so few women in so many unions, there is a possibility that whatever gains women make could easily be eroded and negotiated away. On the surface of it, I would say that even if there are other factors, I am not sure what those other factors might be. The principle of it is not one that we support.

Ms. Caplan: Under this legislation, the onus is on the employer to ensure that all the results are not because of gender discrimination. Would you agree that within the context and premise of this bill it is up to the employer to establish that any change or result following that, whether it is merit or bargaining strength, is a result of a nongender bias? Is that your understanding as well?

Ms. Ramkhalawansingh: That is certainly there. That is my understanding, but there are still several limitations within the bill as it is proposed. As I have said before, we view it as being limiting and not going as far as we would like it to go. It is still an interim bill and there are several changes that could be made. Only time will tell whether you make them now or at some point in the future.

Mr. Stevenson: I have one last brief question. How many women representatives on the Ontario Advisory Council on Women's Issues own and operate their own businesses?

Ms. Kerr: I would say four or five out of 15.

Mr. Chairman: Mr. Dean, you had a supplementary.

Mr. Dean: Yes. Unless you rule otherwise, it is supplementary in that it applies to the same section Mr. Stevenson asked about, although to a different subparagraph of it. It is clause 7(1)(c) on page 14 of the bill.

Ms. Ramkhalawansingh: I do not have it here.

Mr. Dean: I could read it to you. Subsection 7(1) reads, "This act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of..." and there are several things.

The one I am questioning is clause 7(1)(c) which is the result of "a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender."

Do you support that?

1030

Ms. Ramkhalawansingh: I think our brief is fairly clear in that--

Mr. Dean: I am sorry I have not had time to read it.

Ms. Ramkhalawansingh: It is fairly clear in that we have suggested that there should be no exclusions.

Mr. Dean: No exclusions. In other words, is it fair to say, then, that you do not think that recognition of merit has any place in a compensation plan?

Ms. Ramkhalawansingh: I do not know that we have decided it specifically in that way, have we?

Mr. Dean: If you say there are no exclusions, I take it that automatically should mean that nothing should come in the way.

Ms. Ramkhalawansingh: This is not to say that we are asking employers to hire and fire people on the basis of merit. I think that, presumably, when you hire people you hire them to get the job done, whether that should be translated into wages and whether it means that you reward some people more than other people, there is a possibility of rewarding men more than you reward women on the basis of merit.

Mr. Dean: That is true. One could do that, but one does not have to do that. The provision here says, specifically, that such a plan would not discriminate on the basis of gender. It is only under those conditions that it would have no application here, if it were a nondiscriminating kind of merit plan.

Ms. Ramkhalawansingh: I do not think that this is a major issue with respect to this legislation. I think it is an important issue but I think that what is also clear is that there are many ways and there are many loopholes so that, even if you are satisfied that that protection is there on the basis of gender, I think employers have the capacity and the ability to prove that they are not doing that while at the same time, in practice, they are.

Mr. Dean: That is very hypothetical when you already accusing somebody of--

Ms. Ramkhalawansingh: Which is why we suggested there be no exclusions.

Mr. Dean: In other words, you are really saying that merit should not be a factor in compensating people.

Ms. Kerr: I think if you consider the fact that we are talking about pay for work performed in terms of the value of the job, we took it to mean that as a base. I think, at some point, there is obviously going to be some kind of a merit, and I do not think we would reject the fact that there would be a merit system established.

Mr. Dean: Thank you. I am pleased to hear that.

Ms. Caplan: I noted that your brief is dated June 1986, and that it addresses a response to the Ontario government green paper on pay equity and to Bill 105 which was the Public Service Pay Equity Act, 1986. Have you prepared a brief specifically after, or has your committee met to prepare a response specifically to Bill 154?

Ms. Ramkhalawansingh: We did meet to look at Bill 154, and we decided that instead of doing a technical section by section, it was probably much more helpful for our purposes, because you are going to get a section by section, to deal instead with the principles that we outlined in that document, such as I summarized this morning.

We remain very much at a general issue level.

Ms. Caplan: It is more of a general principle issue level as opposed

to a specific within the bill. I just wanted to clarify that.

The other question that I have relates to the comment you made regarding composite testing. Correct me if I am mistaken, but I believe that refers to an old bill which was Bill 141 of about three years ago.

Ms. Ramkhalawansingh: Bill 81, I think it was.

Ms. Caplan: What I would like to ask is whether you have done any kind of analysis or comparison on that bill versus Bill 154 and the provisions for allowing the valuation to be done on the basis of merit, skill, responsibility and working conditions as opposed to the composite testing which in my understanding--only permitted the composite to be one compared directly to the other, and it was not all sections of the composite, then you did not have a comparison. Have you done that kind of analysis for the two of those?

Ms. Ramkhalawansingh: I think I have sort of lost your question. We have not done an analysis in the way you have suggested. We are suggesting that, given we have now introduced the principle of equal value generally and given we have introduced the notion of a composite test with respect to equal value for the broader public sector.

Ms. Caplan: I would just like you to expand on that, because I am not clear on what you mean by accepting a composite test.

Ms. Ramkhalawansingh: Section 4 of Bill 154 defines the way in which value is going to be applied. It reads, "For the purposes of this act, the criterion to be applied in determining the value of work shall be a composite of the skill, effort" etc. Given that you have accepted that principle and the principle of value in this instance, I am suggesting that you need a collateral amendment to the existing Employment Standards Act to permit a composite test for individual workers. It is one way of getting around the less than 10 employees not presently covered by Bill 154.

Ms. Caplan: Was your reference not to the old bill? One of the things we have had at this committee has been some semantic problems. I just want to be clear on what exactly it was that you are saying.

Ms. Kerr: No. I think Ms. Ramkhalawansingh's point is that we would like to see the extension of that composite test idea, as it is defined here, to the Employment Standards Act.

Ms. Caplan: I would like to hear why you feel that is necessary, since this bill will be a requirement for pay equity as it stands alone.

Ms. Ramkhalawansingh: But this bill excludes a whole bunch of categories of people, such as in establishments where there are fewer than 10 employees. There is no such limitation in the Employment Standards Act.

Ms. Caplan: You do not feel it would create confusion if we had that kind of provision.

Ms. Ramkhalawansingh: The only other way of doing it would be to extend completely this bill to fewer than 10 employees. It is either one or the other.

Ms. Gigantes: Thank you for your brief. I particularly appreciate



the last point, because I think you are absolutely right about it.

Have you been able to figure out how many women will not be covered under Bill 154? A simple yes or no is fine.

Ms. Ramkhalawansingh: No.

Ms. Gigantes: On recommendation 3(B), the definition of "establishment," we have heard many suggestions from business employers that in fact the definition of establishment contained in Bill 154 is too broad for their purposes. They would like an even further narrowing of the definition to allow them to define different parts of their establishments, as they are defined in the bill, into functional establishments, so that women working in the office would not be compared with women working in the warehouse or the production shop. You have suggested a completely different kind of approach, which is to broaden the approach. Can you tell me why that is of concern to you?

Ms. Ramkhalawansingh: I think the possibility of the functional approach allows for multiple wage classification systems within an organization. When an employee works for an organization, the ability of that organization to pay an employee a wage is dependent on the combined activities of that corporation and not on the subunits of that organization. Therefore, the benefit of the activity of all the employees who contribute to the ability of that organization to make profit, to produce whatever it has to produce, should be available to all the employees in that organization. That is the reason we have supported the corporate approach rather than other approaches.

Ms. Gigantes: Thank you. On page 17, there are two points I would like to ask you about briefly. We are limited in time, and there are a lot of questions I would like to ask.

You have made it very clear that you feel that equal pay adjustment should not come out of annual wage increases.

Ms. Ramkhalawansingh: Right.

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Ms. Gigantes: In recommendation 5(B)(4), you have not elaborated on this recommendation, which reads, "Provision for specific plans to monitor ongoing discrepancies and to eliminate the difference within a specific period of time." I am assuming what you are suggesting there is that we should call upon employers, within their plans or however the mechanism is going to be achieved, to make up the wage gap within a certain amount of time.

Ms. Ramkhalawansingh: Yes.

Ms. Gigantes: Do you have a suggested time?

Ms. Ramkhalawansingh: No, we do not.

Ms. Gigantes: In recommendation 6(A), what you are suggesting to us, if I read A correctly, is that all employers should be covered--you have suggested that earlier--and that, in fact, we should call upon all employers to define an equal pay plan. In other words, you would prefer there were no employees who were not given the opportunity to have a plan available to them and to review it.

Ms. Ramkhalawansingh: That is our broad, over-riding approach to pay equity. It does not necessarily get into details of Bill 154, but we suggest there are a number of ways of perceiving it.

Ms. Gigantes: I have no problem dealing with principles on these matters.

In recommendation 8(B), you have suggested, and I do not believe we have had this recommendation from anyone else, it is one that interests me, that we should have a tribunal which would be the final review body. Can you tell us why you have suggested that in principle?

Ms. Ramkhalawansingh: I think the stuff that goes before that outlines a whole string of reasons. The intent of having a tribunal was to separate the activities of the commission from the tribunal. The commission would investigate and prepare all the stuff and there would still be some other body to which all that can go, so it is not a commission investigating a complaint and then also sitting on its own. The tribunal will be separate.

Ms. Gigantes: You see the tribunal as the final appeal, and there would be no appeal to court on the content of a decision.

Ms. Ramkhalawansingh: We have never discussed that. The council does not have a position on that. I can tell you my personal position, which is that I would certainly see some appeal to the courts available.

Ms. Gigantes: Beyond a tribunal.

Ms. Ramkhalawansingh: Yes, but as I say, I do not think the council has discussed that specifically.

Ms. Kerr: I think at the time this brief was prepared, as Ms. Ramkhalawansingh has suggested, Bill 154 was not drafted. When we talked to the government agencies that were involved in drafting the legislation, there was some concern that they were not even clear on exactly who this pay equity commission would be and how its function would work. We began to get the impression very clearly that we would end up with some kind of commission that, in fact, either had no teeth or would be so heavily involved in one section that it would not have any opportunity really to address complaint situations.

Our reason for suggesting an independent tribunal was that they had not put a lot of thought behind the pay equity commission and who exactly would sit on that and how it would act, particularly in regard to the public service as well.

Ms. Gigantes: May I ask the parliamentary assistant at this stage: If I understand Bill 154, now there is an order given by a review officer. That can be appealed to a commission. If, say, an employer decided that he did not like the decision of the commission, not in terms of the way the process was carried out particularly but in terms of the decision itself, the concept of the matter--I have forgotten how you say that, the fact of law in this case--that would be appealable to court?

Ms. Ward: On a point of law it would be appealable to court.

Ms. Gigantes: On a point of law, but in terms of the content of a decision?

Mr. Ward: In terms of the decision, no.

Ms. Gigantes: Thank you very much.

The Acting Chairman (Mr. Baetz): Thank you. Mr. Lupusella, you are the last one, and keep in mind that we are all prisoners of time.

Mr. Lupusella: I will be extremely brief.

On page 3 of your brief, you emphasize the dual approach to pay equity, one being for the public sector and some later, unspecified date for the rest of the economy. Thus you view this legislation as a basic labour standard applicable to all employees. The question I would like to raise is, how do you reconcile the principle of pay equity affecting organized workers and unorganized workers? What kind of pay equity formula should the government apply for unorganized workers?

Ms. Kerr: I am not quite clear for which kind of an answer you are looking. The brief seems to address the fact that we are looking for an equal pay.

Mr. Lupusella: It is too vague.

Ms. Ramkhalawansingh: I do not think you can have two different standards, one for organized workers and unorganized workers. If that is what the question is, we would like to see a particular piece of legislation to which all workers will have access. When you start carving it up on the basis of size of employer or when you start excluding employers with fewer than 10 employees, or because they are organized or unorganized, that is a fundamental principle of equal pay being available to all people who work, to all women who work, to be able to be compared with men. That is not a way in which I would view carving up the application of any legislation.

Mr. Lupusella: If there is principle involved under terminology of pay equity, you also have to be realistic about the formula which the government has to implement about the people who are not organized by the trade union movement. What kind of formula should the government implement in order that all of these people will be covered by it?

Ms. Ramkhalawansingh: One thing I would do and we have indicated that is one part of the formula would be to facilitate the unionization of those work places. That is one part of the formula. I would assume the pay equity commission and the resources available to the government would be such that they would be able to devise those kinds of formulas. We do not have either the budget or the expertise to undertake a study such as you suggested to bring about those formulas. Our role is very much that of providing policy advice and direction to the government. It is not necessarily to give them a detailed study such as formulas and funding levels and all of that kind of thing. We are not able to give you an answer to that question.

Mr. Lupusella: Let me ask you the final question which is related to the principle that whenever the government implements pay equity in the private sector, are you of the opinion that minimum wage in Ontario should be scrapped because there is no need for it anymore?

Ms. Ramkhalawansingh: Any legislation such as minimum wage is a piece of protective legislation and if it did not exist, there would be significant problems created for large numbers of workers in the province.



Ms. Kerr: The other point too is part of the difficulty in doing anything that relates to gender bias and pay equity is the fact that there are a great number of women who work out there who are not unionized. They are not necessarily comfortable with unions and union situations. We would be the last people to suggest that all women should be unionized together as a group, called the union of women and therefore we would legislate for all kinds of changes and use that as our clout.

By the same token our concern is that some kind of a principle be established that gives them some protection and some right to equal pay situations. I do not know whether that is answering your question either. I am not sure whether you were trying to get at those women who are not unionized versus those who were. If there is no opportunity for those women who are not, if you are not either going to encourage them to be part of the union structure so that they can be actively involved in any kinds of collective bargaining and therefore gain their strength, then that should be part of what is stated in the policy as well.

Mr. Chairman: We are running a touch late. I will have to conclude the hearings for the Ontario Advisory Council on Women's Issues. I want to thank you on behalf of the committee for your presentation before us this morning and your patiently responding to our questions.

1050

Ms. Kerr: You are welcome. Thank you very much.

Mr. Chairman: I now would like to call forward the representatives from the Association of Municipalities of Ontario and ask that they take some comfortable seats in the front row.

I am very pleased to have AMO representatives with us. As Mr. Dunbar is well aware, there are members of this committee and others in the audience who are former members of AMO, so you can consider yourselves almost among family when you address this committee. We welcome the input of AMO on a very sensitive issue, one with which we are grappling to attempt to come up with responsive legislation. Thank you for taking the time to come before us this morning. If you will begin by introducing yourselves individually, it will be helpful from the standpoint of Hansard and also so that the committee will know who you are.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Ms. Cooper: My name is Helen Cooper, and I am an alderman in the city of Kingston. I am representing AMO. I am a member of the labour relations committee of the association. With me today on my far left is George Metcalfe, who is personnel director for the city of Etobicoke and co-chairman of AMO's labour relations committee. Sharad Kerur is beside me. Sharad is the administrator-manager of labour relations for the association.

I will begin immediately by saying that we wish to express great appreciation for the existence of Bill 154 in that it contains a significant number of recommendations made by AMO last year to the consultation panel on pay equity. We wish to restate our support for the principles of pay equity and its implementation. We have also endorsed support for the issue of employment equity and recognize that the two must necessarily go together. One is rather hollow without the other.

We certainly favour the bill before you in these hearings over Bill 105. It is well known that we expressed serious concerns about the possibility that Bill 105 would be eagerly implemented. We have some concern at the moment about short notice and short duration of this consultation process, and therefore the recommendations before you are what we must term "preliminary." We recognize that individual municipalities may have wanted to make representations, but we are doing our best today to represent their interests.

If you would like, I can go through this very quickly. We have a total of eight recommendations where we would consider some amendments useful. Certainly, we would welcome your questions.

Our first one is concerned with item (b) of the schedule at the end of the bill in which the employer of the establishment is defined. We suggest that item (b) of the schedule accompanying the legislation and affecting the definition of "establishment" make clear that any authority, board, agency or commission in a municipality that is separately incorporated or is designated as a separate entity under any act or acts shall be deemed to be a separate establishment.

The point here is that there is such a multiplicity of these authorities, boards and agencies that vary from municipality to municipality in terms of jurisdiction for the municipality as the employer that we feel some better definition is required, either in the bill or through regulations, so that we can better understand what the establishment is in a number of instances.

Also, we would ask for further clarity on the definition of "job class." We suggest that "job class" means a grade, rank, level or group of positions in an establishment that has similar required job qualifications, is filled by similar recruiting procedures and has its compensation determined by the same rate, range of salary or salary schedule. There may be a generic term such as "clerk," but within that term there are many divisions within a municipality. We think we should be referring to those levels within a particular job definition.

Our third recommendation is that except for clause 2(1)(b), which exempts private sector employers with fewer than 10 employees from the act, the legislation be structured for municipal employers similarly to private sector employers such that small municipalities would be given the option of developing pay equity plans but would also be required to make mandatory wage adjustments. I am sure you are well aware there are many municipalities in the province that have a very small number of employees, and the onus of developing a full pay equity plan may be a significant onus. We are suggesting there be some relaxation for very small municipalities, although still requiring that they recognize the need for a system of equity.

We also ask that large municipalities be given at least as much time as large private sector employers to develop and implement pay equity plans. At the moment, municipalities are all being given a total of two years whereas large private sector employers, depending on size, are being given three or four years. We are asking for similar consideration. In discussions particularly applicable to regional municipalities, there were extremely diverse employers.

Our fourth recommendation is that subsection 6(2) be amended to read, "No employer or bargaining agent shall bargain for or agree to compensation practices and no arbitrator or board of arbitration duly appointed or



established under any act shall award a provision that, if adopted, would cause a contravention of subsection 1." In other words, in this recommendation and the next one, we are asking for specific recognition of the arbitration process, which is an extremely significant factor in pay determination in certain sectors of municipal service.

Our fifth recommendation asks that under subsection 7(1) "demotion pay procedures" also be recognized since we regard these as also not discriminatory on the basis of gender; in other words, the opposite of merit pay. Also, subsection 7(2) should be amended to read, "This act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength or is the result of an arbitration process." In other words, we are suggesting the deletion of the words at the beginning of that section, "After pay equity has been achieved." We do not understand the relevance of that caveat.

Our sixth recommendation is that subsection 5(1) and other relevant sections of the act be amended to replace the words "or comparable value" with "or nearly equal value." We believe the act is attempting to say "or nearly equal value." We think that there is a double meaning in the use of the word "comparable" and ask that you consider this.

Our seventh recommendation is that subsections 13(4) and 13(5) be amended and made similar to the provisions of subsections 14(4) and 14(8), to provide for a review period after the mandatory posting date of the pay equity plan. In other words, as we read the act at the moment, we sense that if people are within a bargaining unit, they do not have the same ability to comment or complain about the pay equity plan as posted that they would have if they were not in a bargaining unit. We are suggesting that be rectified.

Our eighth and final recommendation is that a new section be added to the legislation stating that the negotiation of a pay equity plan shall not impinge upon the employer's right to classify or not classify jobs, which is currently a right that is on the bargaining table.

That is the total of our presentation.

Mr. Chairman: There are some questions from the members of the committee. I would like quickly to raise one at the beginning because I never seem to get time to get on at the end. With respect to the phase-in period for the various sizes of municipalities, you are indicating that municipalities should be given more time than the two-year mandatory period to adjust, that they be phased in in a time somewhat similar to that allowed larger corporations. Are you also suggesting the number of employees be aligned directly with the formula outlined in the bill; in other words, the 500, the 100, the over 10, that kind of formula? Can you be more specific about what you have in mind with respect to that phase-in period?

Ms. Cooper: No, we are suggesting the same employee levels be applied to municipalities as are applied to the private sector.

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Mr. Chairman: Then a municipal corporation would be dealt with in the selfsame fashion as a private corporation. That is what you are asking for.

Ms. Cooper: Yes, we are requesting that specifically for, and we are



more concerned for, the larger municipalities. We feel the two-year period is very onerous. We are more concerned when we are dealing with employees of 100 or more, so we are asking for consideration within the private sector around three and four years within those employee levels. That is really what we are focusing on. We are not as concerned about the smaller ones.

Mr. Chairman: On the first definition of establishment--you may not be able to answer this completely now; if you can, that is fine--we are probably going to have some difficulty in terms of determining specifically the meaning of "establishment." Your concern is that it does not spill over to other agencies, I assume, like the Hydro commission or an arm's-length body that could be broadly interpreted as being part of the corporation.

There would be some value in the Association of Municipalities of Ontario giving us a very precise outline of what those organizations are so that when we go through clause-by-clause, we will be very--the point I am trying to make is that different municipalities have different organizations. That being the case, if you have relationships with organizations like an animal patrol, as an example, which could be either private or corporately operated or funded, you may want to outline specifically those kinds of things to make sure that we understand your interpretation of an outside agency or something outside the core establishment.

Ms. Cooper: We would certainly be happy to do that. I think I can give you one example that is much more immediate as well and that is the police commission. By your definition, it appears a police commission would fall under clause 2(1)(a). However, municipalities pay police officers. We are not sure whether a police commission would fall under clause 2(1)(a) or (b). That is a very immediate service of a municipality, but then of course, it would stretch, especially depending on the size of the municipality, the other sorts of boards or commissions with which it may be involved. We have had the example, too, of libraries, for instance. In smaller municipalities, the structure for libraries is probably much closer to city hall than it is for a much larger employer, where it is much more of a separate entity, bargaining unit and so on.

Mr. Chairman: Just so I make my request clear to you, when we get to clause-by-clause, which will be two to three weeks from now, what I would like to have for the purposes of the government and the parliamentary assistant is a very clear definition of what you consider to be the core of the corporation and those other agencies that are totally arm's-length and would be separate establishments in your interpretation. The only way we can attempt to accommodate that and write legislation that will reflect the concerns you express is if we know exactly what it is you mean. We could take the rest of the morning just discussing that point and I do not want to do that. I think you understand where you could be helpful to us and it is important that you do that.

Ms. Cooper: Yes.

Mr. Stevenson: As a supplementary, I think there would be a group that would almost always be deemed as being included, another group that would almost always be deemed as being excluded and a group in the middle that is a sort of swing that varies all over the map depending on the setup in various municipalities.

Ms. Cooper: We certainly would be more than happy to undertake to define--

Mr. Chairman: You may run into some problems. I am not giving you an easy task, if you think that I have, because there are variations within municipalities depending on their size and their relationship to various agencies. If we are going to be clear in the drafting of this legislation to make it reflective of the concerns you have raised, we have to have a clear indication of your views on that point. That is all I am saying. Spend a little time on it. Make sure we understand the language you are speaking; what is of concern to the municipalities. We can then attempt to draft something that will take into consideration some of your concerns.

Mr. Dean: As you said, Mr. Chairman, there are some of us here who consider that we have belonged and maybe still belong in an honorary fashion, at least, to the AMO family. I welcome the participants here, and the éminence grise who is trying to keep out of sight over there by the wall, Mr. Dunbar, who is looking more grise every day.

Mr. Baetz: What does that mean?

Mr. Chairman: I have a feeling MacDonald Dunbar is not too sure what it means either.

Mr. Dean: I appreciate the work you have done already with respect to this issue on the former bill and I am glad to know you feel that some of your concerns, at least, were recognized and made part of this bill. Most of the points you have raised are extremely valuable and I hope we will find a way to accommodate them in the final legislation. I have a question that is not of great import, but I am interested that you raised the question of demotion pay procedures. What you are asking for is quite reasonable. Do you have any idea what municipalities would have as a stated demotion pay procedure, compared to what they might have as a promotion pay procedure?

Ms. Cooper: That is a good question. Sharad, perhaps you can answer.

Mr. Kerur: Certainly. They are probably more in line with personnel policies in so far as disciplinary action is considered. The idea behind this recommendation is that where you have merit or promotion, it is generally held that a promotion is not a promotion unless there is some increase in compensation to go along with that. By the same token, a demotion would not be a demotion unless there is some reduction in compensation, usually taken in conjunction with some disciplinary process. The concern of this recommendation is that where you are exercising that process in a very nongender fashion, a demotion situation for disciplinary purposes would take away compensation, but pay equity might artificially give it back. Therefore, the discipline is not discipline within the context of its relationship to compensation.

Mr. Dean: The demotion pay procedures you are referring to would vary greatly from municipality to municipality depending upon what they had established as the opposite side of their promotion process.

Mr. Kerur: That is right. In the same fashion, promotion or merit practices are going to vary as well.

Mr. Dean: Would a lot of those be actually stated as formal procedures?

Mr. Kerur: Yes, quite a number will be stated and certainly there will be provisions where there are union agreements for how those procedures are to be exercised and what one can do to contest those sorts of procedures.



Mr. Dean: Would you say that where those procedures are in municipalities by means of a union agreement or by voluntary act of the council they are already nondiscriminatory as between male and female?

Mr. Kerur: I believe they are because they are usually tied to the performance an individual does. Of course, the measurement of performance is generally held in municipalities as being a nongender issue.

Mr. Dean: What you are proposing would certainly do nothing to weaken the achievement of pay equity as based on gender.

Mr. Kerur: That is correct. That is why we also specifically wanted to state that it was demotion pay practices that were exercised on a nongender basis.

Mr. Chairman: I ask the committee to try to keep it to one question and maybe to supplementaries because I have a list here that I have to get through. The committee always co-operates with the chairman, so I know I will not have any difficulty whatever in making that request of you.

Ms. Caplan: My question is in regard to your recommendation 7, which suggests that the procedures outlined under subsections 13(4) and 13(5) be changed to be the same as under subsections 14(4) and 14(8). The presumption in the bill--this is just by way of preamble so they will know what I am talking about--is that where there is a unionized bargaining unit, the union will ratify it before it agrees with the employer on the plan. Therefore, there has been consultation with the employers and they have had that opportunity through that process. The reason there is a difference with the nonunionized is that the employer is presenting a planned proposal and then allowing for a response time by the nonunionized work force affected.

If we made these two the same and allowed for that review process, do you not think one would just add additional time for no purpose, other than perhaps to create divisiveness within the union structure where presumably it had already been ratified and employees would have recourse through their bargaining unit if they were dissatisfied with the plan that had been negotiated and ratified by that unit?

I have difficulty understanding why you have made this recommendation because it would seem to me that it would significantly interfere with the relationship between the bargaining unit, the union and its membership and have the potential for a divisiveness that I think would be unhealthy and that would be the rationale for the difference.

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Ms. Cooper: I understand exactly what you are saying. If the bargaining process is working well, there should not be any problem. There should be no need for further recourse. We feel it is still important to allow an individual--if there are individual circumstances where inequity is occurring that may be overlooked in the process, an individual should still have the ability to state her case and have a procedure for complaint that can be dealt with within the system as quickly as possible.

Ms. Caplan: I guess the concern I have is where you have a formal bargaining unit. Are you not concerned that the assumption is there that the



plan would be ratified by the membership or accepted by the negotiating committee?

Ms. Cooper: Sharad would like to answer.

Mr. Kerur: There is a bit of a conflict because what we are talking about is pay equity which grants a benefit in what is really an individual rights type of situation. Not everybody is going to benefit from the pay equity legislation; only a select few within a particular bargaining group may benefit from it. When it comes for ratification purposes, I think that one of the situations for ratification to address is a vote by majority. When you are in normal rounds of collective bargaining, any rights that are negotiated by the bargaining agent on behalf of the employers are rights to be shared by all people in that bargaining group. Contrast that with the situation with pay equity, where again there bargaining is taking place, but taking place really on behalf of only a select few who are going to benefit from that.

Therefore, if you have a situation where you have, let us say, a male-dominated bargaining group and you have only a select few females in that bargaining group, then the ratification process might work to the detriment of the females in that group who might have otherwise benefited because most ratifications of course take place by majority vote. Situations could develop where those females might lose out or some inadequacies in the plan might develop that do not quite fully address the pay equity situation for those females in that particular group.

Ms. Caplan: I would like to ask the staff present to comment on the procedure that will be in place to respond to that concern.

Ms. Alboim: If a member of a bargaining unit feels that her individual concerns have not been adequately taken care of in the collective bargaining process, and she feel they have not been adequately represented by her bargaining agent, she can complain through other vehicles and other mechanisms.

Mr. Kerur: Through the bad faith bargaining.

Ms. Alboim: That is right.

Mr. Kerur: It is our understanding that with the bad faith bargaining process you are asking another jurisdiction to come in, which would presumably be the Ontario Labour Relations Board, a process that is quite often delayed. What we would envision here is that of course if there are no complaints to be made, it would be the same as for an employer-established plan; the plan simply gets implemented. If there is a complaint to be made, it is brought within the jurisdiction of the appropriate body, namely, the Pay Equity Commission of Ontario, which would have the expertise to deal with it.

Ms. Alboim: The intent of the legislation was to use the collective bargaining process and use that vehicle.

Ms. Caplan: My concern is that if we adopt a recommendation, we would seriously impact and interfere with the established collective bargaining process and of course that is not something that we want to do.

Ms. Gigantes: I wonder whether I could ask you about two of your recommendations that seem to me puzzling. One is recommendation 4 and one deals with arbitration, 5(ii). If I am reading correctly, 4 reads, "No

employer or bargaining agent shall bargain for or agree to compensation practices," and the addition you are suggesting is, "and no arbitrator or board of arbitration duly appointed or established under any act shall award a provision that, if adopted, would cause a contravention of subsection 1."

Essentially, what you are saying is that an arbitrator must have in mind, when he or she delivers a decision on a pay application, that this legislation requires that, during the period of implementation at least, the direction of comparability among jobs will require that if municipal employees who are not, say, policemen or firemen, policepeople or firepeople, are going to be raised, it does not widen the gap between that job class and a comparable job class, a civilian job class, as it were, within the municipal ranks. So there is a kind of constraint placed on the arbitrator under your recommendation in 4.

If we turn then to 5(ii), what you would suggest is that we change 7(2) to read, "This act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength or is the result of an arbitration process." The result of an arbitration process, presumably in this case, would be one that raised the pay levels of constables or first-class firepeople to a level that increased the gap between that job class and a comparable civilian job class in the municipality.

Those two proposals seem to be me contradictory.

Ms. Cooper: That is a very good point. I will ask Mr. Kerur to explain it in greater detail. It seems to me we are asking that arbitrators be aware of the pay equity plans that are established, but then I guess we are also requesting the opportunity, as is the case in a number of other areas, to show that we are duly paying full heed to a pay equity plan but that a system beyond our control is preventing us from doing that.

Ms. Gigantes: Right. You cannot have it both ways. You cannot, on the one hand, say to an arbitrator, "We know it is not going to be the firepeople or policepeople who are going to be suffering the wage gap." In fact, it will be other classes of employees--this is already a component of the municipal work force--who might be compared to them in some way or other, so they will be the leaders in this comparison as far as pay is concerned.

If you say to the arbitrator, "You cannot award something that is going to increase the pay gap," what you are saying to the arbitrator is, "We are making this equal pay legislation a constraint on your ability to decide what the value of a firefighter or a policeperson is."

On the other hand, you are suggesting that, if by any chance, under 5(ii), an arbitrator comes up with a decision that raises the pay levels of the firepeople or the policepeople, you are going to be able to turn to the commission and say: "It ain't our fault. The arbitrator did this."

Ms. Cooper: Recognizing, of course, that the decision, in the end, rests with the commission.

Ms. Gigantes: Can you tell me what it is about the arbitration process that so concerns municipalities? I do not understand it, frankly, and I have spent a lot of time thinking about it. Obviously, the people concerned here are enrolled in the job classes to which other jobs might be compared. They are wage leaders in a municipal sense in terms of the skill, effort,



responsibility and working conditions. All those levels have to be high, and so they are leaders. We set up the arbitration process because we wanted to make sure they got well paid for the serious jobs they did.

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Ms. Cooper: That is not my understanding of the reasons for the arbitration process. I understand it is a definition of essential service.

Ms. Gigantes: Yes.

Ms. Cooper: It is a requirement that these employees not strike.

Ms. Gigantes: That is right, and we want to set up a system that pays them fairly when they cannot exercise collective bargaining rights as other employees can.

Ms. Cooper: Yes. The Association of Municipalities of Ontario has been commenting for some 13 years now on the arbitration system and what it sees as the current inequities between employer and--I cannot call them bargaining units--associations in the arbitration system. I understand you are under a time constraint but we would certainly like to discuss it with you. It is another very large issue, but I understand the point you were making earlier. I think it is an excellent one. We would more than welcome the opportunity to discuss the arbitration process with you. but I do not think we really have time right now. Mr. Kerur would like to comment further on the point you first made.

Mr. Kerur: Recommendation 4 is really saying that when you have implemented pay equity, you have established a relative ranking in terms of value of jobs. That relative ranking is then reflected in the salaries paid for those jobs. Recommendation 4 is saying that balance should always be maintained. In effect, if we are talking about the same unit, where there is a compensation increase for one group, a compensation increase will have to be given, if you are an arbitrator, to another group, to ensure the balance is maintained. Otherwise, in our belief, you would be in contravention of subsection 6(1).

Ms. Gigantes: I am afraid I do not understand that. When you are an arbitrator, you are dealing with the job class to which others will be compared in terms of compensation.

Mr. Kerur: No, when you are an arbitrator, you are dealing with a bargaining group.

Ms. Gigantes: Yes, but we know who those people are. We know the positions they fill. They are firefighters and police officers.

Mr. Kerur: Firefighters are a very different group, because if we assume for a moment that there are female classifications in a firefighters' bargaining unit, the rate established for a first-class firefighter is then applied on a percentage basis across all other classifications. It is a unique group because this is really bargaining or arbitration by formula. When one sets the rate for a first-class firefighter, one automatically then knows the rate for a platoon chief, a district chief, a second-class firefighter, a third-class firefighter and a fourth-class firefighter. The entire wage schedule is known.



Mr. Chairman: It is a fixed percentage differential?

Mr. Kerur: That is correct.

Ms. Gigantes: We are talking about the bargaining group called "firefighters". Your amendments are addressing other bargaining groups or other categories of employees being compared to those which go through the arbitration process.

Mr. Kerur: I am sorry. I do not quite follow you. Are you talking about a cross-bargaining unit.

Ms. Gigantes: You are not telling me there is a category called "female firefighters"?

Mr. Kerur: No, there is not. I am saying that if it happened that, within a particular bargaining unit, there were a female-predominated class and a male-predominated class that were going to be compared together, they would be ranked in a manner that would establish pay equity. There is going to be a balance maintained between that female class and that male class under this legislation. Our recommendation is saying that neither the bargaining process nor the arbitration process should alter that balance once it has been established by pay equity. That is what we are saying in recommendation 4.

Ms. Gigantes: How would it? I do not see how it could?

Mr. Kerur: It could very well be that during the course of bargaining, if the arbitration process was the last resort, the bargaining agent was negotiating outside pay equity and was negotiating some rate that is different for the female class than for the male class.

Ms. Gigantes: Okay, I understand you now.

Mr. Kerur: If they were allowed to proceed, they would not be allowed to proceed under bargaining to do that, because that would throw the pay equity out of whack.

Ms. Gigantes: Okay. My problem with recommendation 4 is that I look upon the application of recommendation 4 and 5(ii) as ones that might affect the inter-bargaining or cross-bargaining unit comparison that might go on in a municipality.

Mr. Kerur: First of all, recommendation 4 could not adequately deal with the cross-bargaining units.

Ms. Gigantes: It might. If you had clerical staff in the fire department and they were paid a certain rate because they worked in this section, which was subject to arbitration, then other clerks in the municipality, if it was a small municipality, might wish to compare themselves to the clerks in the firefighters' force.

Mr. Kerur: In that case, let us say one of those units was able to bargain and the other unit had to go to arbitration; neither one would be able to bargain for anything that would alter the other class and the other unit's bounds in terms of pay equity.

Ms. Gigantes: Yes, because if an arbitrator decided to increase the grid, as it were, for the fire department and some comparable job was raised

because of it, then the outside group seeking comparison would say you have to close this gap. -

Mr. Kerur: That is correct. We are saying that is all the more reason to have "arbitration" in there. If you did not have it in there, exactly what you said would happen.

Ms. Gigantes: Then you are saying to an arbitrator, "Your hands are tied in terms of dealing with pay levels within the arbitrated group by the fact that we have determined that you have to maintain in mind this comparison with the outside group."

Mr. Kerur: That is correct.

Ms. Gigantes: On the other hand, over in recommendation 5(ii) you say, "If the arbitrator does upset the balance, then we have to be able to go to the pay equity commission and say it is the arbitrator's fault, not ours, so leave it alone."

Mr. Kerur: Not really alone, but some other adjustment is going to have to be made to ensure that the balance is maintained.

Ms. Gigantes: No. Recommendation 5(ii) would absolve you of any need to make an adjustment because you would go to the commission and say: "Actually, all this happened because of the arbitration process. We did not do it because of gender bias, so please overlook this. This has nothing to do with our policy in terms of this bill."

Mr. Kerur: Recommendations 4 and 5(ii) are an attempt to bring the arbitration process and arbitrators in line with the bill. Employers fully understand what their obligations are under the bill; we do not think arbitrators understand.

Ms. Gigantes: What employers are telling me now in your forum is that in a sense they would like to use the equal pay legislation that affects them--whatever form it takes--to get at what they do not like about the arbitration process. What the arbitration process may do is increase your obligations under this legislation.

Ms. Cooper: I think we could say in quick summary that we are simply asking that arbitrators pay attention to duly constituted and processed provincial legislation in another area. That is all we are asking.

Ms. Gigantes: If I believed that arbitrators lowered the pay of the classes of municipal workers we are talking about, then I would think we should look at that. When the adjustment is going to be the other way, and we know it will be, if there is such an adjustment, what you are getting at is the arbitration process.

Anyhow, Mr. Chairman, may I have one little question?

Mr. Chairman: Can it be very brief? I have allowed you a considerable amount of time and I have another questioner.

Ms. Gigantes: Yes. I was surprised. We heard from the Ontario Library Association, which represents employers and trustees as well as librarians, and it suggested we should be very careful in setting up the administration of this legislation to provide provincial payments for the

achievement of equal pay in the public sector. When we heard from the Ontario Public School Trustees' Association, it did not mention the topic and you have not either.

Mr. Kerur: I am sorry; do you mean on the level of provincial payments made to municipalities for provincial-municipal services?

Ms. Gigantes: Yes.

Mr. Kerur: We are addressing that issue in a subsequent presentation to the Treasurer (Mr. Nixon). We were commenting in terms of the specific clauses in Bill 154.

Ms. Gigantes: We could put it in the bill for you, so why do you not send us a copy of your submission to the Treasurer?

Mr. Dean: Thanks for the offer.

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Ms. Cooper: That is most generous. There is an intricate transfer payment system now between provincial and municipal government, and it is a debate in the municipalities whether it would be robbing Peter to pay Paul to make this kind of request. If we had the assurance that would not be the case, we would certainly consider it.

Ms. Gigantes: The Treasurer does not decide who gets what under what legislation. In a minority House, we can sit and debate who gets what under what legislation. We would hope to be able to convince the government on this, because it would be a money bill.

Mr. Kerur: The submission we are making to the Treasurer is, in terms of transfer payments in general, which pay equity costs will be a component in respect of provincial or municipal services?

Ms. Gigantes: Right. One can single out the costs of equal pay adjustments, obviously, once one has gone through the process, whatever it is we end up with under this act. It seems to me reasonable that public sector agents should identify that cost and put in the bill to the society that has called upon it to make an adjustment to its practices.

Mr. Stevenson: In the past two or three years, some municipalities have already made moves to bring pay equity schemes into their administrative plan. Has that been done in very many areas, and do you have any feeling for the increase in costs and for the sort of problems they are running into using the evaluation procedures that are currently available?

Ms. Cooper: Mr. Kerur can supply the statistics. Of course, to establish pay equity plans requires a job evaluation system as a first step. You can tell the committee how many municipalities actually have one in place.

Mr. Kerur: There are very few municipalities that do have some sort of job value mechanism in place right now. It needs to be clarified that these municipalities are in some respects going beyond the requirement of whatever the pay equity legislation is going to have. They will be the ones most prepared for pay equity legislation by virtue of the fact that they are doing job evaluation. But they are not limiting their comparisons, for example, to



the female predominated versus male predominated. They are working within the gender groups as well.

The other reason they seem to be doing it is that it is simply good human resource management practice to be able to undertake job evaluation in a large establishment.

The costs vary. There are certainly two types of costs. One is the administrative cost, which is primarily the cost of using consultants. Some very large municipalities have spent upward of around a quarter of a million dollars to do job evaluation. Some mid-size municipalities that have undertaken it have started their costs at \$50,000 to \$60,000, and costs thereafter can range from \$1,000 to \$1,100 per classification prepared.

A large number of municipalities are very small, and they have not undertaken any job evaluation simply because of the size of their work force right now. In their view, there is no need to undertake immense job evaluation at this point.

The experience with job evaluation is somewhat limited right now and is concentrated among large municipalities.

Mr. Stevenson: I had an opportunity to speak briefly last night with a few of the councillors from the town of East Gwillimbury. They have gone through the procedure and made some changes, but I did not have time to go into any great depth.

In the bill here, there are some concerns with the definitions of job class and so on, and the percentages put in there, that there may be some manipulation done to control those numbers. Do you see that as a concern in the extended public sector?

Ms. Cooper: We represent a membership which is extremely honourable. We have not discussed that among ourselves. My immediate reaction to your question is to say that is not likely. In terms of this whole structure, work has been defined as inside and outside work, and there have been two very clear gender differentiations within that.

I am not saying there are not some grey areas, but it has been fairly structured in terms of clerical services, the so-called inside workers, and the road crews and so on, the so-called outside workers. It would be extremely difficult for a municipality at this stage to try to manipulate that kind of situation, where the differences are great.

Mr. Chairman: I want to ask one question with respect to the subject area being pursued at some length by Ms. Gigantes relative to transfer grants. I wonder whether, while you are sitting around the committee rooms on University Avenue, the attitude of the members of AMO is that because this is provincial legislation and because municipalities will be subjected to it in some fashion, as outlined in your response, whatever the costs are, they should be covered in total by transfer grants, since it is perhaps not your problem but our problem which we are trying to rectify. Is there an attitude of that type among the AMO members?

Conversely, is there an attitude that we share in a problem of trying to rectify some imbalances in pay structure, that therefore it is, in some fashion--I am not going to give you a formula of 80-20, 75-25, 50-50 or whatever--our collective problem and that, therefore, we should conjointly

shoulder the responsibility of trying to find the solution, which means money? I am only asking for your opinion.

Ms. Cooper: I answer from my own opinion, not AMO's opinion. Certainly I have heard a variety of expression within the association. I think the potential conflict in association policy is that we have argued for quite some time--I am sure it was an issue for those of you who were involved with AMO in the restructuring of the transfer system--for more autonomy and unconditional transfer payments to municipalities. Therefore, we would be potentially talking out of both sides of our mouths if we said, "Yes, we want specific funding for a specific problem but, at the same time, we would like much more discretion in all other areas in how you dispense funds to us."

That is our biggest dilemma in answering the question. In answer to Ms. Gigantes's earlier question, we do not want to be inconsistent within ourselves in terms of requesting autonomy for our own financial affairs. I am sure there is a shared burden of responsibility. I can answer that personally as well. I am sure there have been inequitable practices within municipalities that we have the responsibility to correct. But it is terribly difficult to say whether it is 50-50. I do not know. I would have to think about it a lot more.

Mr. Chairman: I am only asking for your opinion and your view, to be helpful to the government, frankly, in terms of your attitude about the problem out there. If the municipalities see it as a shared responsibility, I think that is a sign of great maturity, if you will, on their part, because, quite often, I have seen municipalities take the position that because some other level of government brings in a piece of legislation that impacts on them with respect to equipment, standards or whatever, it is automatically the responsibility of that level of government in total again.

I think at times there has to be a shared arrangement or relationship on some of those programs. I am not suggesting what that might be. I would like the opinion of the other gentleman quickly on that same point. I have heard yours, and I appreciate your views.

1140

Mr. Kerur: The answer can be found on page 19. Enclosed here are our recommendations made to the consultation panel on pay equity last year. Recommendation 7(b) states:

"Where jobs whose costs are shared with the provincial government in accordance with a provincial-municipal program funding ratio are covered by a pay equity plan, all pay equity costs associated with those jobs should be shared with the provincial government using the same ratio, and municipal transfer payments should be increased in accordance with the provincial government's share of the pay equity cost liability."

We are certainly very much in favour of sharing the pay equity cost where there is a shared responsibility established for particular jobs.

Ms. Cooper: Yes. This applies particularly to social service jobs where we have very specific formulas.

Ms. Gigantes: Can I ask a supplementary? When we are dealing with the question of how much people get paid in society and we know that we are dealing with a total societal problem, with discrimination in the work force

and the pay levels that women have had, would you consider it a useful point of reference to think of a tax system that reflects income as opposed to rental accommodation or square footage on a house without any concern about the number of people in the family--some reflection of income, in other words, that is, a provincial income tax base which at least has some ability to reflect income levels?

That, certainly, is my way of looking at it. I would encourage you as an organization, in spite of all this foofaraw that we hear from our chair about maturity and so on, that when we get to a discussion of the basic societal problem of discrimination in pay levels, it is not a bad idea to think of directing it through the tax system that most reflects income level.

Ms. Cooper: Again, I do not want to try to answer that question now. AMO has developed extensive policies on what it considers the validity of the property tax system, and what is valid to be supported by property tax and what is valid to be supported by income tax. We would be happy to let you have that information. We have certainly addressed that question at great length.

Mr. Chairman: If I may say this, that subject is substantially more vast than what we will be able to get into in this forum at this time. It is a matter of interest, I know, to the committee members, but Ms. Gigantes well knows that she has exceeded the limited parameters of this bill.

Mr. Ward: She was badgered.

Mr. Chairman: No. I do not think so.

Ms. Gigantes: I will convince you yet, Mr. Chairman.

Mr. Chairman: I am sure you will.

I want to thank AMO for a very interesting presentation as usual, well researched and undoubtedly given a great deal of thought by your organization. Thank you for responding to our questions. On behalf of the committee, we always welcome your views and the opinions of AMO. You are an important partner of the provincial government in providing services to the province and the people of this province. We welcome the continuation of that partnership. Thank you.

Ms. Cooper: Thank you very much.

Mr. Chairman: Say hello to Mac Dunbar if you see him, would you?

We will take a five-minute break.

The committee recessed at 11:45 a.m.

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Mr. Chairman: Mr. Yule is here. Mr. Yule is with the firm of Waldie Brennan & Associates Ltd. who are labour consultants. With apologies for being a little bit late, Mr. Yule, we look forward to hearing your presentation now. If we could, we would like to break it into two parts, your presentation and then some questions. I think you were here listening to some of the earlier presentations so I guess you have an idea of the format. We welcome you, sir.



## E. ANDREW YULE

Mr. Yulé: I am pleased to have this opportunity to make my views known to this committee on pay equity. I wish to say at the beginning that I am a supporter of the principles of pay equity. My work for the past 30 years has been the elimination of pay inequities of all kinds from wage and salary scales on behalf of women and men. For much of that time, I worked as a job evaluation representative for the United Steelworkers of America and since then, I have continued the same work as a consultant. During that period I have observed at close hand and in some detail the multitude of ways in which women's work has been undervalued in the work place.

Although there are many fair employers in this province, education and persuasion do not appear to have produced a substantial correction of these discriminatory pay practices, and I agree that there must be a law to do it. I believe, however, that the Legislature must pass a law which tackles the problem in an effective fashion. The bill that is before us now, in my opinion, will not accomplish the results unless it is improved in fundamental ways.

Let me tell you where I see flaws, and then what should be done about them.

Under this bill, women will be initially slotted into pay groups, undoubtedly through some form of job evaluation. Once they are slotted there, they can only be compared for pay equity purposes to the lowest-paid male job in the group, or if no such comparison is available within the group, to the highest-paid male job in the next lowest group.

The first question is: What job evaluation system is going to be used for this task? My experience with pay inequities over the years is that many of them were created in the first place by management consultations using job evaluation schemes based on extremely arbitrary and subjective principles and have ended up placing most of the women in the bottom three or four job classes.

Next, by limiting the comparison to the lowest-paid male job in the group, the law will ensure that women will still be the lowest-paid members of the group. Even if there is only one such low-paid male job, and the rest of the men are located at higher pay rates, the women will be compared to the low male job. In other words, when the whole exercise is finished, we may have a group of jobs which have been declared to be equal in value but in which the men's jobs will be more equal than the women's.

If these limitations and opportunities for arbitrary judgement are not enough, the bill introduces the idea of gender dominance. An underpaid woman will be excluded from any comparison if she does not belong to a job whose membership is at least 60 per cent female. In addition, she will have no male job for hers to be compared to unless it is made up of at least 70 per cent males. This factor can be depended on to eliminate a great number of underpaid women from any redress against pay discrimination. Furthermore, the gender dominance rule is highly vulnerable to manipulation by an unscrupulous employer.

Another problem is that, with jobs being lumped in so-called "pay groups," the equitability of the pay scale itself escapes any kind of measurement. Low-paid women will never have their rates measured against those of the highest-paid males in the establishment to permit this kind of

determination. In banking, for example, it has been customary to place comparatively heavy responsibilities upon relatively low-paid female employees who may have no male counterpart in their group. Unless such female jobs can be measured against higher-paid managerial jobs, no adequate determination of pay equity can be made. Perhaps the best examples are found in the female job ghettos, like the garment, small assembly, nursing homes and fast food industries.

After all, it is not a few women isolated here and there throughout the work force who are the victims of pay inequity; it is the majority of women in the Ontario work place. Let us not then include in the pay equity law provisions designed to exclude large numbers of them from any kind of comparison whatsoever.

What changes does this law need?

First, when job evaluation systems are used for purposes of pay equity, they should be free of provisions which permit the introduction of irrelevant or arbitrary decisions into the evaluation. One way to ensure greater fairness is to have the evaluation jointly selected and carried out by management and worker representatives, including fair representation of female workers.

Second, all women's jobs in an establishment should be subject to comparison with all male jobs without the limitations imposed by a single pay group or by the principle of gender dominance. Thus, the overall equity of the entire pay scale in the establishment can enter into the exercise, and women workers in the female ghettos will avoid exclusion from the benefits of pay equity.

Third, measurement of establishment-wide average pay inequities should be permitted as an alternative to job-to-job comparisons. This is one way of assuring a square deal.

Unless the law is amended in these ways, I am convinced that a great many of Ontario working women, and probably the majority of those most in need of the law, will end up being denied pay equity.

I want to say a word as well to those who have come before you from the so-called National Citizens' Coalition. They have been reported as claiming the pay equity law will constitute an unwarranted intrusion into the sacred domain of the labour market. I believe this is nonsense. We have employment standards established by law in Ontario, workers' compensation, the Occupational Health and Safety Act and the Labour Relations Act, which permits employees to join unions and to bargain with their employers about the entire range of wage and working conditions. Perhaps the citizens' coalition would like to do away with all these intrusions into the labour market, and I do not doubt that at all, but the principle of pay equity has been an omission from labour standards whose observance by Ontario employers will not harm any employer. It will be no more onerous to obey than any of the other provincial laws I have just mentioned.

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Ms. Gigantes: Thank you very much for the presentation. I find it very inspiring actually.

On page 2, when you talk about the problem of comparing a female job group with the lowest-paid male job group, I have often wondered how it is



that these lowest-paid male job groups arrive. We have had examples proposed to us to illustrate the mechanisms of the legislation that say to us, "If female group X can be compared to three male groups Y, Z, A, then we choose the lowest of Y, Z, A." How is it, within places of employment, that there can be three male groups who have jobs comparable in terms of value according to skill, effort and responsibility and working conditions, and yet one of those three male groups will be paid significantly less than another?

Mr. Yule: One of the things that is wrong with the setup here is that most evaluation programs do not have enough pay steps to isolate different jobs. When you go out into a work place and try to put most of the women's jobs into the bottom three or four categories and most of the men's jobs into the bottom categories, in most cases, these jobs have never been evaluated and they just have an automatic way of doing it, which shows differences between jobs.

Some of those jobs are considered by management as higher-paid or lower-paid jobs, but when you evaluate them without having the proper number of pay steps, they all end up in the bottom. If you do not have enough pay steps, you are automatically going to deny comparing all the women in the system to anybody who has any real, large pay. You are going to compare them only to the lower people.

I have done a study. I have been working on this now for pretty near a year and a half. I know exactly what is going to happen. I am not coming here to say to you that I think this is going to happen. I know what is going to happen. The payments of this thing will be to the higher-paid women who will be found to be underpaid and to the middle-paid women who will be found to be a little bit underpaid, and the lower-paid women will be found to be correctly paid using the system. You are going to have a huge payout and it is going to go to the wrong people.

Everybody is asking "How much does this cost?" I say if it costs \$50 million and it is not right, that is too much. If it going to cost \$1 billion and it is not right, that is a disaster. There is no way that any system can work fairly with the values and the things that you have in this law. It just will not work--no system. You are going to exclude the people who need it, and you are going to give the money to people who may not really need it.

Ms. Gigantes: That is because we will be working with the given job classes.

Mr. Yule: Yes.

Ms. Gigantes: On page 4, in the second paragraph, you suggest that we should be willing to have a comparison under this legislation of all female jobs with any other jobs in the place of employment. How do you do that for a large place of employment?

Mr. Yule: It is very easy. You evaluate the jobs properly, you figure out who is getting paid properly and who is not getting paid properly, and you adjust the wages accordingly. If you have a proper system that will really isolate where the inequities are, you can do that, but you have to do it on an average basis. You cannot do it by comparisons.

For instance, a lot of discussion has been held about the garment workers, who are very low-paid. It may be right that they should be low-paid if the management is low-paid, but if management is paying itself like a



General Motors' executive and then saying the women have to be paid like--I will not give you any comparison--that is wrong. If the middle management, who can keep the workers down and thus get more money for themselves, is not in the comparison, then that is not fair. If you are going to put all the burden on the women in a pay scale, in the remuneration that is given to the whole group, that is wrong. You cannot find those kinds of comparisons by using this type of thing, where you compare to the lowest male in the group.

Ms. Gigantes: You would look at a place of employment first and say, "Okay, who is in management, who is in middle management and who does the work?"

Mr. Yule: No. What I am saying is that the whole thing has to have some relationship to each other. If management is overpaying itself and underpaying the workers, the women, not the workers, because nobody else has changed, just the women, this is the way it should be. This is a bill to give pay equity to women. If you change men, then you create more imbalance in the pay scale. There are methods of doing this in such a way that you can isolate how much the pay gap is between the men and the women, and you can determine how much each women's job is underpaid in comparison to that pay gap. The pay gap should go from the bottom to the top.

Mr. Polsinelli: Can I have a quick supplementary to that?

Ms. Gigantes: I am just going to ask one more question, and then I am finished.

Mr. Polsinelli: Just a supplementary on one of the points you raised.

Ms. Gigantes: Go ahead.

Mr. Polsinelli: Ms. Gigantes asked you about page 4, where you indicate that all women's jobs should be compared to all men's jobs, and then you say without the use of gender predominance. How would you identify what a woman's job is and what a man's job is to compare them?

Mr. Yule: A woman's job is what a woman is doing.

Mr. Polsinelli: Does that mean every position where one woman is occupying a position should be compared? You are no longer looking at classes then. You are looking at each individual.

Mr. Yule: Yes.

Mr. Polsinelli: So each individual should be compared with each other individual.

Mr. Yule: If there is a woman and a man on a job and one is getting paid the same as the other, if you use comparison, one cancels out the other for any inequities. So we do not have to worry about that.

Mr. Polsinelli: That is equal pay for equal work.

Mr. Yule: Yes, but it cancels out--

Mr. Polsinelli: Okay. I guess we all know that.

Mr. Yule: If there is one woman and one man and they are both being

paid the same for doing the same job, when you average it out, that man cancels out that woman. You do not have any problems there.

Mr. Polsinelli: You are saying, then, we should not even be looking at job classes, but we should be looking at the individual person and comparing that person's job with another individual person's job. You compare the individual woman with the individual man.

Mr. Yule: No, you compare all the jobs to all the jobs. There is a hierarchy that develops when you start evaluating jobs.

Mr. Polsinelli: Yes, I understand that, but you are saying if you are comparing women's jobs and you are looking at a job class, and if you are looking at a job class, how do you identify whether that job class is a male job class or a female job class? If you do not use gender predominance, what criteria would you want to use?

Mr. Yule: I am not looking at women's jobs or men's jobs. I am looking at the women in the work force and their pay.

Mr. Polsinelli: Then when you say all women's jobs should be compared to all male jobs, you are saying--

Mr. Yule: I am saying, compare all jobs.

Mr. Polsinelli: Okay.

Ms. Gigantes: Can I ask a final question? If you had a work place of 250 employees or a work place of 500 employees, would you be able to go through the process you are describing to us and create an equal pay plan in a year?

Mr. Yule: Yes, and you do not need outside consultants. The people who are in the place can do it themselves.

One of the things that disturbs me about this is, here we are, we are going to make a law that is going to affect a lot of people in Ontario, and there is no blueprint about what it is going to do. You would not think of building even a garage; you could not even build a garage in Ontario without showing how you are going to affect other people and how--

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and there is no blueprint about what it is going to do. You would not think of building even a garage--you could not--in Ontario without showing how you are going to affect other people and how it is going to be done. Yet the people who have suggested this law and who must have been consulted about it have never given a blueprint of how it is to be done.

There are ways to determine blueprints. I can make blueprints, and that is how I got my information that it will not work. I will not say it will not work. It will not work the way the government or the women want it to work. The title of the law is "pay equity." It will not produce that; it will make things worse.

1210

Ms. Gigantes: Thank you very much.

Mr. Stevenson: We had a presentation by Peat, Marwick.

Mr. Yule: By John Rives?

Mr. Stevenson: Yes. Instead of comparing fairly adjacent groups, he was talking about comparing to a trend line, a type of regression analysis between a point system and a pay scale. Are you suggesting that because of the groupings that women tend to be working in, there will not be a suitable trend line established so that sort of system will work in many companies?

Mr. Yule: The system that is outlined in some of the studies I have done completely eliminates the bottom two or three pay steps for any woman in that group to be getting anything, even though women are the lowest paid in the group and there are considerable numbers of men in that group who are very well paid. The women will not move one bit.

Mr. Stevenson: Is that problem because of the way the legislation is written or because of the type of job analysis that will be performed?

Mr. Yule: It does not matter what type of job analysis you perform on it. If you are going to say these jobs are all equal, but we are only going to take the lowest one in that group to make the women equal, it will not work, because in any group you find some low-paid men. You find the majority of the low-paid men in the lowest groups, and this is where the thing will not work.

It will not do what this Legislature wants it to do. It will do a job for consultants who are going to sell this; it will do a job for managements which are going to relieve themselves of any payment, but they are still going to make the payment out of the top to people who do not deserve it.

Mr. Stevenson: In your evaluation, have you had any experience in dealing with some of the problems that exist in the agricultural industry?

Mr. Yule: I have dealt with a lot of industries throughout Canada. I have never dealt with the agricultural industry, but I do not see any difference. It has jobs and values, and you can isolate those values if you have the proper system to do it.

Mr. Stevenson: I noticed there was a press clipping here about a group that came in, which I missed. They were very concerned about the situation where we pay field labourers more than child care workers. There was another example drawn in the past, and I just saw a summary of it. I do not know where it came from, but it compared stenographers at the University of Guelph with field workers on the research farm at that university.

It is difficult to attempt to get a job evaluation of, let us say, a base field worker, somebody who is going to be picking rocks and throwing bales, which does not need a great deal of skill, yet it is virtually impossible to find anybody who will do those jobs. You can find warm bodies with zero output, but it is hard to find somebody who has the initiative and the interest in working at those jobs. Essentially, you are in the position that you have to pay reasonably highly to get somebody who has a strong back and, while in the field, tends to have a weak mind and not think too much about what he or she happens to be doing at the time.

How do you evaluate that sort of thing and put that on a pay scale to get the sort of people you need to accomplish those jobs? What I am saying is that, as an administrator, I can hire a man or a woman to do jobs in the



office much more easily than I can hire a person to pick rocks and throw bales and get somewhere near equal output from the two groups.

Mr. Yule: You do not believe in equal pay, because what you are saying to me is that regardless of how that man evaluates, I want to pay him more than I do the woman. I am saying to you there are underpaid--

Mr. Stevenson: No, I all I am saying I want to get people who will do the job.

Mr. Yule: There is nothing saying you cannot overpay a man. All I am saying is that if you are overpaying a man because of all these so-called reasons, there are the same reasons why you should overpay some women. But women never get overpaid. They talk about the market, yet nurses' wages have not escalated because nurses are in short supply. Their wages stay the same. They talk about computer experts and all these people who are in short supply so their wages have to escalate, but how about the nurses? Why do their wages not escalate in the same way as you are talking about with farm labour?

Mr. Stevenson: I am not sure we are talking about the same sort of situation here at all.

Mr. Yule: You say there is a shortage of farm labour, so you have to pay more for workers.

Mr. Stevenson: Yes.

Mr. Yule: Maybe that is why they are opening up the immigration--

Mr. Chairman: This is very interesting, but we do have time constraints. Because of the hour, I wonder if you could get to the specific question you want to raise, rather than entering into a debate with our guest.

Mr. Stevenson: I will just raise a thought and not expect an answer here. The other situation on the agricultural scene is, again, a group that generally would be classed as farm labour. You want to hire a person, usually with no university degrees, no special training, who can be trusted to take an \$80,000 tractor and a \$120,000 combine four miles from home under absolutely no supervision whatsoever. You expect that person to operate, maintain and harvest, or deal with a cropping situation totally on his own, with no usually defined skills or training involved. I think that, as most people who rate these jobs know zilch about some of these positions, those people, in general, will be rated very lowly. Yet those people are almost impossible to find in today's market.

Ms. Gigantes: Why would they be rated low? There is a high level of skill. They have to maintain this equipment. There is effort, responsibility, working conditions.

Mr. Stevenson: But none of them will have any degree of training other than hard knocks.

Ms. Gigantes: Are you going to maintain a harvester with no training? God, I could not do it.

Mr. Yule: I would like to interject here. Most likely that individual would be underpaid.

Ms. Gigantes: That is right.

Mr. Yule: If he is underpaid and you average it, that will have a bearing on the women's rates in this, too. They will not then be able to say, "We are entitled to much more." If they are involved with men who are underpaid, the result is that they will be underpaid, too, and rightly so. I am not arguing about that.

If you take the whole system and you put in the averages of the underpaid men--and there are underpaid men out there. This has to be taken into consideration. If you do not take that into consideration, you do not get pay equity. That is why you have to have the average.

Mr. Stevenson: I understand what you are saying. I am not sure that you understand what I am saying, but I will leave it at that.

Mr. Chairman: All right. Thank you very much. I appreciate a point of view which, I might add, is entirely different from any we have heard to date. It is refreshing to hear another dimension of the problem and to try to get a better understanding of it. I think you have contributed substantially in that respect. On behalf of my colleagues on the committee, I thank you for taking the time to come before us.

We have a very heavy afternoon. I ask all members of the committee to be here at 1:59:30 so we can get our coffee and start at exactly two o'clock.

The committee recessed at 12:20 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, MARCH 4, 1987

Afternoon Sitting

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Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Ontario Public Service Employees Union:

Clancy, J., President  
Peters, I., Chair, Pay Equity Committee  
Greckol, S., Research Consultant  
Shilton Lennon, E. J., Legal Counsel; with Cavalluzzo, Hayes and Lennon

From the Municipal Electric Association:

O'Brien, J., Chairman  
Millman, M., Manager, Municipal Labour Relations  
Bowker, A., Chief Executive Officer

From the Council of Ontario Universities:

Farr, W., Member, Council of Senior Administrative Officers; Vice-President of Administration, York University  
Morton, Dr. M. E., Member, Council of Senior Administrative Officers and Member, Task Force on the Status of Women; Faculty Member, Queen's University  
MacDougall, B., Executive Director, Council of Senior Administrative Officers

From General Motors of Canada Ltd.:

Curd, F. R., Vice-President and General Director, Personnel  
Pratt, M., Employment Equity Co-ordinator  
Wakefield, T., Government Relations Representative  
Christie, M., Government Relations Representative

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, March 4, 1987

The committee resumed at 2:04 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good afternoon. I am pleased to welcome the Ontario Public Service Employees Union to our afternoon session. We look forward to your comments and your input on Bill 154. I will ask you to introduce yourselves, if you will, in just a moment. Mr. Clancy, the president, is here. I welcome you, along with the other members of your delegation.

The hearings we conduct before the standing committee on justice are normally ones in which we hear a delegation's views in its brief and some of the comments it wishes to make, followed by questions. Although we will not watch the clock that closely, if you leave about half the time for questions, that will probably be of benefit to committee members and also to your representations. With those brief words of welcome, we thank you for coming before us and look forward to hearing what you have to say.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. Clancy: I can introduce the other representatives of the Ontario Public Service Employees Union here this afternoon. To my immediate left is Isla Peters, the chairman of our pay equity committee. To her left is Elizabeth Lennon, legal counsel on pay equity for OPSEU. To my immediate right is Sonja Greckol, research consultant to OPSEU on pay equity.

There is a certain *déjà vu* about being here and about some of things I want to say this afternoon. Some of them we have said before, principally in our appearance before the committee when it was deliberating and discussing Bill 105.

My union has been fighting since the 1940s, when public service workers, members of the Civil Service Association of Ontario, formed women's committees to fight for the right to equal pay. Today, OPSEU represents almost 100,000 people working for the Ontario public, both directly for the government and throughout the broader public sector. We represent people in every walk of life, from museum curators to cleaners, cooks, teachers and secretaries. From every local of our union, where, more often than not, women outnumber men, there is an urgent call for fair pay and the demand that it become the first priority for our union and for you, the legislators.

Women in Canada and Ontario continue to subsidize the economy and their employers through substandard wages. In this regard, there is no disagreement over the fact that women continue to earn less than two thirds of the male wage. In male-dominated jobs, women are the food handlers to the male cooks. In female-dominated jobs, men are the financial officers to the female collection clerks.



In a recent opinion poll carried out for Southam, 67 per cent of Ontarians recognized there was a wage gap and felt that women with the same skills generally got paid less. Of those, 85 per cent say that pay equity legislation should be introduced to close the wage gap.

It has now been almost two years that we have had a new Liberal government in Ontario working on the basis of an accord with the New Democratic Party. During that time, we have submitted brief after brief and been engaged in what has seemed an unending process of consultation, discussion and research. These delays cause cynicism and frustration; they also compound the injustice of the present system, in which many women work for substandard wages.

Some of these workers have been forced to strike to raise their wages, such as OPSEU members who work for children's aid societies in Ottawa and London. If the delay in implementing pay equity continues, many women workers will retire unable to benefit from improvements in pensions that should have come by now from good pay equity legislation.

It must not be forgotten either that public sector workers were devastated by wage controls. Hard-won collective bargaining rights were weakened and wage gaps were increased by the imposition of percentage controls. Lower-paid public sector workers, most of them women, came off the worst.

The decision of the government to bring in two bills, both of which you are now seized with, was unfortunate and divisive. All workers--public service, broader public sector and private sector alike--were particularly anxious that no one group should be left out. All have good reason for their fears. The government's strategy was unnecessary and merely served to intensify a debate that was an artificial one at best.

The public makes no distinction between workers when it comes to social justice and equity. Whether this legislative process ultimately leads to one bill or two, our guiding principle is that one common set of principles should apply to all workers. As the Ontario Federation of Labour said in its brief to you:

"It makes no sense at all to segregate people into groups. To do so, as the legislation proposes, is to tell people who happen to work for one kind of employer, that they somehow have a greater or lesser right to equity and justice than those who work for someone else. The point of establishing rights for people is to make them available and to make them real for all people, regardless of where they work.

1410

We remain consistent in our demand for strong legislation embodying common principles for all workers and therefore direct our remarks to Bill 105, as well as to Bill 154. As an affiliate of the Ontario Federation of Labour, we have fully participated in a process of reaching consensus with the other affiliates. This constructive process formed the basis of the OFL brief which you have heard.

We have also been involved in the Equal Pay Coalition and we applaud its efforts in building consensus among community and women's groups on this issue. We endorse the presentations of both organizations.

It has been a growing and a learning experience for all of us as a simple issue of fair pay, regardless of one's sex, becomes a complex and technical issue. We commend the government for its willingness to legislate pay equity on a broader basis than has ever been attempted in North America. However, there are still serious flaws in both pieces of legislation. If these problems are not corrected now, they will merely surface again later to dash the hopes of women workers for an early end to their discriminatory treatment.

We ask the committee members to make sure that all workers get strong pay equity legislation, and we respectfully ask those from the Conservative Party whether their party will specifically commit itself to strong equal pay legislation for women in the private sector.

Ms. Peters: Bill 154 covers all private sector work places with 10 or more employees and the broader public sector. It lays out a process similar to Bill 105 for achieving pay equity through job evaluation. Systemic sex discrimination in pay is to be identified by comparing female job classes with male job classes. When the comparisons are made and any necessary payouts are made, it is claimed that pay equity, by definition, will be achieved, but there is no test to see whether the wage gap has narrowed through pay equity payouts.

We need a broader definition of pay equity that will ensure better payouts for women.

Legislation that allows for the greatest flexibility in terms of implementation but sets the standards for success is legislation that will, in the end, close the wage gap. Within these limits, employers and unions know best what is possible in their own work places. Rigid job evaluation and comparison methods make the process more complicated, more intrusive, more time consuming and more costly.

As we said in our brief on Bill 105, no employer with an ounce of good sense will spend millions of dollars to implement job evaluation only to disband it after the pay equity payouts are made.

How many employers have the resources to implement job evaluation on a massive scale? How many employees want new job descriptions? How many employers, employees or unions want an outsider at the bargaining table controlling the language and cost of bargaining? Therefore, we need a definition that provides a test for success, not a prescription for confusion, cost and possible failure. We need guarantees that the wage gap will close in Ontario and that discrimination in pay will cease.

We therefore recommend that for the purpose of the legislation, pay equity will be achieved when the wage differential between female and male job classes is reduced by an amount attributable to systemic wage discrimination.

Let us see unions and employers negotiate the closing of the gap and, where there are no unions, let us see the Pay Equity Commission establish guidelines for employers to gauge the amount of pay equity payouts.

Management consultants who specialize in job evaluation and, more recently, pay equity, generally are branches of United States corporations that make millions of dollars out of employers' need to rationalize pay structures. These consultants, who eight years ago were reassuring management and union officials in Minnesota that everyone paid women less, are now the proponents of pay equity in Minnesota, Manitoba and Ontario. These days, their



customers are public sector and large private sector employers. They receive most of their income from the taxpayer.

If any employers doubt the practical problems with implementation of full-time job evaluation schemes, ask the provincial government, which is now struggling, behind schedule, to implement a job evaluation plan for 14,000 office workers in the public service. Even though this plan was negotiated with OPSEU, and even though its pay equity goal is limited to internal comparisons among workers doing broadly similar work, its implementation is fraught with difficulty, largely because of the failure of supervisors to understand how to evaluate the jobs under their jurisdiction. How much more difficult will it be if job evaluation is ordered across the board for workers doing widely diverse kinds of jobs?

What happens if there are no male jobs of similar value? Bill 105 opted for layer upon layer of job evaluation plans to allow the most opportunity for comparisons. Bill 154 says that if you cannot find a male job of comparable value, you can opt for a male job with a higher rate of pay but of lower value. If all else fails, you can go outside the bargaining unit.

This is cut-rate pay equity. We are told by government officials that we do not need to get into massive job evaluation because we will start at the bottom and work up. Needless to say, employers will not be willing to go too far up the pay levels. The government has clearly departed from an equal-value model and, in order to remain loyal to job evaluation, has resorted to lesser value.

What is more, comparison methods do not work in all-female work places. The minister responsible for the bill, Mr. Scott, candidly admits that this legislation cannot deal with job ghettos such as day care centres, and libraries, garment factories and retail outlets, as well as many community agencies, smaller hospitals, clinics, group homes, legal clinics, small schools, etc. It is shocking that the government would draw up legislation that has the effect of excluding female job ghettos.

Amendments broadening the definition of pay equity must provide that employers and unions can have greater flexibility to negotiate plans that suit the needs of the particular work place.

Where do the payouts come from? Under Bill 154, employers must set aside one per cent of payroll per year until pay equity is achieved. They cannot reduce employees' pay to implement pay equity, but they can red-circle male or female jobs where the value of a job in a "gender-neutral re-evaluation" is downgraded. Public sector employers are to get no help from the government in the way of transfer payments. As a woman worker in an Ottawa university pointed out: "We've fought cutbacks, layoffs and poor pay for years. Now you're telling us pay equity will create even greater pressures on funding."

There must be stronger guarantees of separate funds for pay equity, stronger guarantees that no employees will be financially penalized and strong protection against cutbacks and layoffs resulting from pay equity.

Pay equity cannot be achieved in the broader public sector unless government recognizes the need to make separate payments for pay equity adjustments, covering not only the administrative costs of plans but also the cost of the wage adjustments themselves.

We therefore recommend a specific amendment requiring increased transfer



payments from government to agencies, hospitals, colleges, etc. until pay equity is deemed to have been achieved.

Years of public sector restraint policies have left many institutions vulnerable and severely constrained financially. We, and they, cannot afford any move which would further endanger the health and welfare of the user-public by requiring such institutions to put more strain on their scarce financial reserves to meet the legitimate goal of ending sex discrimination in pay.

We should not have to accept a lower quality of life in Ontario in order to resolve a social injustice. We should not have to accept cut-rate pay equity so that we can maintain our social and health care services, our educational institutions and cultural resources.

No one should suffer because of pay equity. Neither men's nor women's wages should be downgraded.

Red-circling must be banned. The fear alone of wages being red-circled is enough to discourage participation and undermine the success of a plan. It makes no sense to allow a practice that will disrupt relations between workers, taint pay equity negotiations between employers and unions, and make pay equity a process to be feared rather than a success to be enjoyed by all.

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Mr. Clancy: In our October 1986 brief, we spoke very strongly about our right to free collective bargaining. We say now that for pay equity to be a success in Ontario, unions must play a legitimate and equal role at the bargaining table. Negotiations need to be open and fair. As the Ontario Federation of Labour said in its brief, "Rooting out discrimination requires a greater opening of the books than is usually the case...and it requires a much more open atmosphere in which the creation of a plan to end wage discrimination can be discussed."

Therefore, unions and individual complainants must be given access to all information necessary to deal with the consequences of the pay equity law.

Moreover, if either party requests, bargaining for pay equity plans should take place separate and apart from regular bargaining. We do not want pay equity to be traded off against another item on the table. We do not want the employer to be able to play off one group of workers against another, to damage the benefits of pay equity.

Nor do we want the wage gains of today lost tomorrow. We strongly recommend the deletion of subsection 7(2) which provides for exceptions to the pay equity process on the basis of historical bargaining strength.

The success of a plan depends on rational and tightly defined job groups. To prevent further manipulation by employers and consultants, we need an amendment to strengthen the definition of "job class" by adding that jobs in a class should be paid at a similar rate of pay, as in the Manitoba legislation.

The duties of unions should be balanced by changing the section of the legislation that sets out the terms of liability against unions, so that

unions, like employers, will simply be required to bargain in good faith and represent workers fairly.

Once payouts have been made and the proactive phase is over, there must be strong guarantees that any further cases of discrimination in pay can be rectified and that no new cases can be created. We do not want special cases to fall through the cracks or women in newly created jobs to be out of luck.

But it is not appropriate for an employee to bring a complaint against a negotiated plan, where the plan has been ratified by union members. Such individual complainants should, however, have the right to bring a complaint of unfair representation, providing protection for the employees, the union and individual complainants. Employees should also be protected from reprisals if they make complaints under the act.

Finally, we are concerned that payments resulting from the implementation of pay equity should be made without delay. The time frames proposed in the legislation are simply too long in the face of the overwhelming evidence of past discrimination and in the light of the fact that the longer it takes for women to receive equal pay, the greater the financial penalty they will pay. Older women workers, in particular, who retire from the work force before payouts are implemented, will suffer a reduced pension for the rest of their lives.

Therefore, we recommend amendments that will provide (a) that pay equity wage adjustments will begin no later than two years from the effective date of the legislation; (b) that payouts will be immediate for key groups such as women close to retirement and women of particularly low income; and (c) that all pay equity wage adjustments will be completed and in force within five years of the effective date of the legislation.

In summary, we want legislation that guarantees the following principles: coverage for all women; clear language, to allow us to enforce our rights; respect for unions and our right to free collective bargaining; money into the pockets of women, not management consultants; payouts to women without delay; a strong complaint procedure; and special pay equity funds.

This committee is seized with both Bill 105 and Bill 154. We have put forward the same principles for both bills. In our view, the adoption of such principles will bring about pay equity quickly, efficiently and fairly. We reiterate that pay equity principles should be applied equally to all sectors of workers. These are the principles that we hope will guide your deliberations in bringing strong pay equity legislation into Ontario.

Ms. Gigantes: Thank you for your submission and presentation. I would like to ask for a bit more explanation of two of your major recommendations. I will start at the back.

On page 12, on the recommendation you make for a change in definition of "job class," I wonder whether you can spell out how you think the change would affect the operation of legislation, how you see it operating in Manitoba and what it is you are looking for, particularly in this recommendation.

Ms. Greckol: I think the necessary change you are pointing to is a change that would allow for the purification, shall we say, of a particular job group or job class so that, as opposed to including a wider range of work in the job class, there is a narrower range that is defined by similarities of hiring procedures, similarities of work, similarities of rates of pay. Without



the rates of pay, that still would provide for a fairly broad range of work to be included in one job class.

Ms. Gigantes: Can you give me an example of what that would mean within the public service, for example? Would you be looking at something called a clerk or can you think of a job class as it is applied in this bill and a job class as you would like to see it purified?

Ms. Greckol: In terms of the coverage that was provided in Bill 105 for the public service, that definition was quite explicit and could be fairly easily identified as a job grouping that did involve some range of wages but not a tremendous range of wages.

I guess the kinds of examples that come to mind that could end up in the same class and would be detrimental would be, for example, a clerical function that is related to a computerized function that could be lumped with higher paid, similarly recruited, some similar skills that is a more specialized computer function. I think those jobs would have to be treated separately and have different compositions of male and female, and could, conceivably, under this definition, be included with the same job in the same class.

Ms. Gigantes: Yes. Can I also ask for a description of how red-circling, as it is included in Bill 154 as a kind of exemption or an employer defence, as it were, would work as you are familiar with it in the public service?

Ms. Greckol: How red-circling works?

Ms. Gigantes: Yes, and how it would effect the equal pay planning process here. I think that is something people have not really got their minds around yet.

Ms. Peters: The way red-circling works is that when an employer is evaluating your job, the employer effectively decides that you are being overpaid, not underpaid, so your job gets red-circled and you have to wait over time, until your job naturally would have come up to that level with pay increases. You just continue getting the same but with nothing on top, so in fact, your pay is stopping.

Ms. Gigantes: If there is a process of evaluation or whatever it is that goes on in the work place following on the implementation of this legislation, the employer would be presumably looking at some categories normally occupied by men and saying those categories have been overpaid in the past.

Ms. Peters: Yes, in Bill 154 it says male and female jobs, I believe. My concern is with both. We can speak to our experience with the office administration group plan where the estimated red-circling, I believe, was about 4.5 per cent or 5 per cent, which is actually a very low rate of red-circling when any job evaluation plan is brought in. We have negotiated quite a good deal, but the effect among employees of knowing their job might be one of those that is red-circled is horrendous. You can imagine how you would feel if you were told you were being paid far too much for what you did. We do not want that kind of outcome of pay equity at all.

Ms. Gigantes: If the job that was red-circled was in a job category



that was normally occupied by a man and if we then said there was a comparable female job that we were going to adjust in terms of pay so that it would receive comparable rates, the red-circling would effectively mean that the female adjustments would be lower.

Ms. Peters: Yes.

Ms. Gigantes: Finally, may I ask about your comments on page 10 that relate to who pays? We had representations from the Ontario Library Association, which represents both employers or trustees responsible and employees of libraries. We had representations from the Association of Municipalities of Ontario and we had a representation from the Ontario Public School Trustees' Association. They were different in the sense of what they were asking for in terms of who pays.

The librarians' association was quite clear that it felt it was necessary for the provincial government to be footing the bill. Neither of the other associations referred to this question in their briefs. In subsequent questioning by members of this committee, they seemed a bit at sea about how they were going to pay if they, as organizations, were called upon to shoulder their share of the costs and so on. What is your feeling about who should be paying in the public sector and why do you feel that way?

Mr. Clancy: All these groups you have referred to are transfer payment agencies of one type or variety. Clearly, they are dependent upon the provincial government, and the federal government in a more indirect way, for funding. Unless they go out on community drives and repair bicycles or sell baked goods, how do they propose to raise the money? The money has to come from the provincial or federal government. The responsibility lies with the provincial government to deal with that--setting aside money--in this legislation.

Ms. Gigantes: Does it surprise you that the employers in these fields would not be coming and saying that to us?

Mr. Clancy: Somewhat, but given our experience over the past five, six or eight years, I would guess there is a fair amount of lobbying going on, in some cases, ensuring that they do not come forward and make that a central part of their presentation to you. I do not know how they propose to pay for it and how they propose to deliver pay equity without ensuring that they get greater transfer payments.

I think it is summed up best in our brief with the comments of the woman from a university in Ottawa who said: "For years we have been fighting cutbacks and we have been fighting cuts in transfer payments, and here we are on the verge of introducing pay equity. It will be there, in effect, in name only unless we have the dollars to pay for it."

Ms. Gigantes: School boards and municipalities seem to be taking the approach that they get some funding from the province and some funding from the property taxpayer and that perhaps costs should be split.

Mr. Clancy: Property tax is a regressive tax form. If we increasingly depend on property taxes to fund social service programs, education and programs such as this, which is an issue of fairness, equity or justice, all we do is invite that backlash from those people who feel they are paying for it and who perceive that property taxes should be funding roads, sewers and some of these things in municipalities. I think it is foolhardy to

go down that road. Increasingly, we have seen that tendency over the last 10 or 15 years. I think that those who have an abiding interest in education, social service and health programs are courting disaster if they expect the property tax, which as I say is a regressive form of taxation, to pay for it.

Mr. Ward: On transfer payments, I have a great deal of difficulty comprehending or understanding where the justice is, regardless of how you may feel about realty taxes as a source of funding. There are municipalities in this province that have put in place pay equity plans and there are municipalities that engage in fairer compensation practices than others. There is no question about that. I am sure you can find variances from municipality to municipality. I cannot help but feel that a lot of this can be attributed, arguably, to the fact that some municipalities may artificially constrain their mill rate as one source of their revenue and do so on the backs of their female employees.

I get the sense that what is being suggested here is an increase in transfer payments to those municipalities, boards and agencies that in fact are the biggest offenders in compensation practices. I just do not understand where the natural justice is in saying, "You have a bigger wage gap; therefore, you are going to get an extra 15 per cent in unconditional grants this year to make up for it." To me, that is mind-boggling. It is no different than the exemptions that are being sought.

Mr. Clancy: It is mind-boggling, which is what we have been saying for a number of years. Let us talk about health and social services. As a provincial legislator, how do you justify the fact that in some municipalities people are offered certain services and in other municipalities, depending on whether people are sick or disabled, they are treated differently? I cannot justify it either, but I do not argue that to continue this practice is the route to go on this issue.

Mr. Ward: But are you not arguing that?

Mr. Clancy: I think it is. I think there is a fundamental difference between what you are articulating and what I am.

Mr. Ward: I do not see it.

Mr. Clancy: I am saying to you that to rely on the property tax base in any way, shape or form to fund this legislation is wrong.

Mr. Ward: We can argue till doomsday and you probably will not get much argument from anybody who has been involved in municipal government against the property tax being a regressive form. You are saying, "Take Bill 154 as the solution." That is not going to happen. You know that and I know that. You are saying, "Increase the transfer payments to those municipalities that have the biggest problem; fund it that way." It is almost rewarding them. That is how it is perceived and that is the actual impact. You are rewarding those municipalities that have constrained their other revenue sources to practice unfair compensation schemes.

Mr. Clancy: But unless you are going to deal with the former course, the fact that it is a regressive tax base, which, I take it, perhaps you and I are in agreement on, how are you are going to address that question? In the absence of addressing that question, I see no other alternative. I do not see somehow continuing that practice with this bill being the latest example of--



Mr. Ward: Do you think this should wait until we address the property tax issue?-

Mr. Clancy: Keep in mind that the objective is to put money in the hands of the women workers, not to have women workers sit on the sidelines watching some never-ending, incessant debate about funding bases and so forth. We are calling for legislation to be enacted now, legislation that puts money in the hands of women workers now. I am saying to you, a provincial legislator, to ensure that the municipalities have their money now, regardless of their discriminatory practices, etc. Then strike another committee and we will come back and work with you to ensure that--

Mr. Ward: You know where their resources are and that they are split. What you are saying is the municipalities are absolved in terms of the funds that they are accountable for raising. The money should come from outside. It is the same argument on the separate funding.

Mr. Chairman: Excuse me, members of the committee. The debate, which is what we are getting into, could continue for some time. I would like to get back to the principle the committee's deliberations are about; that is, questions of the delegation and reasonably concise answers. I have a long list. We have dealt with only a couple of short subjects and time is quickly getting away. I will take a brief supplementary.

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Mr. Polsinelli: I am not going to go into my own questions. Since we are dealing with the question of funding and we are dealing with the question of property taxes, I would like to explore that with a few brief questions of Mr. Clancy.

Mr. Clancy, it may be surprising to you but, generally, I agree with your comments that property taxes are regressive and that generally what property taxes should be funding should be the hard services that a municipality delivers to its citizens.

When you look at this type of situation, would you not agree that the individuals who are employed by a municipality are, in fact, delivering services and the remuneration that is paid to those individuals should be funded from the property tax base? That is, the same way you would fund the sewer construction, the same way you would fund road construction. The individuals who run the municipality should be funded by the property tax base.

Mr. Clancy: I do not understand. What individuals?

Mr. Polsinelli: If we are talking about pay equity legislation and we are talking about an increase in the pay to the women who work in municipalities--in the towns, in the villages and in the cities--those are individuals who deliver services to the municipalities. Those individuals are currently paid through the property tax system. If there is an increase in their salaries, the same argument that you would have used with respect to soft services that a municipality delivers and the funding of the soft services, would not be applicable to the funding for the employees who work for the cities and towns.

Mr. Clancy: Does a municipality have any great say in economic policies of the land, of the country?



Mr. Polsinelli: No.

Mr. Clancy: So who ends up dealing with those who are on welfare? Who ends up dealing with those who are sick? Who ends up dealing with those workers, for example, who have been injured in unhealthy operations because of lack of enforcement of health and safety? Is the municipality supposed to pick up that burden? Surely that is a provincial-federal responsibility?

Mr. Polsinelli: When you talk about health, when you talk about welfare, those are the types of services that I agree with you are properly not fully the responsibility of the municipalities. However, if we are talking about sewer construction, would you not agree that is something that would fall within the property tax base? If you were to agree with that, would you not agree that the engineer who determines where the sewer is supposed to go should not also be paid by the property tax base?

Mr. Chairman: This is getting a little off the subject.

Mr. Polsinelli: No. Perhaps I have not made my point.

Mr. Chairman: I think you have made your point well. Go ahead and pursue it, but I would like you to be brief.

Mr. Polsinelli: Briefly.

Mr. Chairman: As soon as you can.

Mr. Polsinelli: Perhaps we should look at what we consider this legislation to be doing. If you consider this to be some type of social program similar to the health care system or the welfare system, then I can understand your argument. But if you are to believe that this legislation is an effective remedy for an unjust wage system, or an unjust remuneration system, then is that not different than health and welfare?

Mr. Clancy: I do not know where to go. You and I could spend all afternoon talking about it. First, you will not find many women working in sewers. You will not find many workers doing those traditional things that you think should be picked up by the municipality. Even if I wanted to apply that analysis to it, I want to ask you to deal with the ones who work in health and social services, for the sake of argument. How are you going to get money in their pockets? You are still faced with the same problem. You have to have the political will to bring forward legislation that says, "We recognize it is a social problem of long-standing and we are prepared to put forward some money to solve it." That means that some of the money that might be spent somewhere else is spent here by you, as provincial legislators.

Mr. Charlton: My supplementary is to the parliamentary assistant, because he took the initiative to put some things on the record which are not completely correct.

Who is at fault in a case where a municipality has complied with the law and the the provincial level of government, the government responsible for labour and rights legislation, identified the problem 20 years ago and failed to act. Who is at fault? You are trying to attribute blame to the wrong place, my friend.

Mr. Ward: I will be happy to respond. I will ask when I want to hear a lesson.

Mr. Charlton: Second, if you force the funding of pay equity from the property tax base, perhaps you would like to explain to the committee who is going to pay at double the rate of the average citizen in this province. It will be the very women you are trying to help, who live in rental accommodation and who are assessed at rates twice the average in the property assessment system. You are going to penalize the very people this piece of legislation is trying to help. In your efforts to try to punish municipalities, you are going to punish the people the legislation is supposed to assist.

Mr. Ward: If the question was directed to me, as I think it was, I will be happy to answer your question with a question, your question being, "Who is at fault if a municipality--

Mr. Charlton: Complied with the law.

Mr. Ward: --engages in discriminatory payment practices, a municipality that derives its revenue primarily from the property tax base and whose elected representatives are accountable and responsible for setting their own fiscal policy?" Your position is that they bear no responsibility in doing that, and I cannot accept that idea. I do not understand how you can reach that point.

Mr. Charlton: No, my position is that the provincial government, which is responsible for regulating that sector, identified the problem 20 years ago and failed to act.

Mr. Ward: Do you absolve the municipalities of all blame in that regard?

Mr. Chairman: Gentlemen, we are entering into debate. I have to rule both the questioner and the parliamentary assistant out of order. I am moving on to Ms. Fish for the next question.

Try to stay on the subject and, while we have a delegation, I ask you to direct your questions to the delegation. I do not mind points of clarification to the parliamentary assistant or to staff, but if they get into a lengthy debate, it is totally unfair to those who have come here to share their views with us; that is, our invited delegation. I am going to Ms. Fish.

Ms. Fish: Thank you very much, Mr. Chairman, and thank you to the delegation for coming forward. I think the recent exchange has been sillier than words, since the property tax system is in a total mess, as it is right now, and there is no sign of it being corrected through the ostensible report of another parliamentary assistant somewhere along the way.

Instead of dealing with the mechanism of payment and payment source, since obviously someone has to pay somewhere along the line, I would like to ask a question about another section on page 12, and that is on the right to complain.

When you are talking about a strong complaint system, can you help me understand how your proposal would work and in what area you feel the legislation is specifically lacking or doing the wrong thing?

Ms. Peters: We have always maintained that we want the complaint mechanism to kick in after we have gone through this proactive phase. The

important thing for us as a union is that we have the time to be able to negotiate with the employer, in much the same way we negotiate a collective agreement. When we have negotiated a collective agreement and taken it back to our membership for ratification, the employer starts to put it into practice.

At that point, we would see a strong complaint mechanism kicking in, where women can complain, first of all, that they have the wrong classification or value attached to their job or that they have been missed out altogether. There may be a number of reasons they can complain, but of course, in the process, there will also be new jobs that are not covered. We want that complaint mechanism to stay there. We see absolutely no reason it should not stay there, in much the way as other complaint procedures exist. I do not know whether that answers your question.

Ms. Fish: It does and it does not. Can you help me to bring it back to your wording, which says, "But it is not appropriate for an employee to bring a complaint against a negotiated plan, where the plan is being ratified by union members." That sounds to me as though some of the illustrations you have used may indeed be legitimate complaints against a negotiated plan.

Mr. Clancy: If you enter into negotiations, you come up with a negotiated settlement. Then the negotiating team takes it back to the members for ratification.

Ms. Fish: Right.

Mr. Clancy: For the purposes of argument, let us say 70 per cent to 80 per cent of the affected members ratified the agreement. All right?

Ms. Fish: I am sorry, I was distracted. It goes back to the membership and you are saying 70 cent to 80 per cent of the membership ratifies.

Mr. Clancy: Let us take those individuals from that 20 per cent who did not agree with what was freely negotiated. They are saying they cannot complain against the negotiated plan. They can lay a complaint against me as a unionist or the union for failure to represent. In other words, it has been negotiated--

Ms. Fish: Maybe I could just stop you right at that point and have you help me. Just walk me through it; what then happens to the plan, if anything?

Mr. Clancy: Nothing happens to the plan.

Ms. Fish: The plan goes ahead.

Mr. Clancy: The plan has been freely negotiated. It has been ratified by a majority of the members.

Ms. Fish: Where does the complaint go?

Mr. Clancy: The complaint would then go before the Ontario Labour Relations Board or the Pay Equity Commission saying that we failed to represent those individuals' rights properly.

Ms. Fish: What you are suggesting is that any such complaint should not affect the timing of the implementation of a plan or put the plan into



abeyance until the complaint has been dealt with.

Mr. Clancy: That is right. You cannot have it both ways. It has been freely negotiated. It makes a mockery of the negotiations. In any set of negotiations there are always those who may disagree with what has been negotiated. They have an opportunity to vote. If they are in the majority their views prevail. If they are in the minority their views do not prevail, but that does not mean the agreement is not concluded and implemented.

Ms. Fish: How do you see handling the illustration you gave in the first paragraph, which is the special cases that might otherwise fall between the cracks or the newly created jobs? Do they become the subject of a new negotiation for those specific areas?

Mr. Clancy: That is right. That could well be. Our fear is that this process begins and then it ends, but what happens if there are new jobs created following that period, and how do those people get captured? What is to prevent the employer from bringing in a pay equity plan today and then next year bringing in a whole group of new workers, but not having them captured by the existing plan?

Ms. Fish: Would you see any special support, or would you consider it appropriate that there be support for individual complainants who might feel that they were inadequately represented in the plan that was negotiated in the course of their complaint? Do you have a ready parallel that you would point to?

Ms. Peters: The unfair representation under the Ontario Labour Relations Act.

Ms. Fish: Just in its normal form; so whether it would be to the labour relations board or whether it might be to the commission, would you see the same kind of process under the section involved?

Ms. Peters: Yes.

Mr. Dean: Just a very short supplementary: On the subject of complaint, we have heard some groups say there is a risk that employers might be subject under this kind of legislation to frivolous or vexatious complaints from somebody who maybe felt the management had its gun out for the particular complainant. How would you recommend that employers be given some kind of protection against this kind of possible unfair complaining system?

Ms. Peters: Right now in our union, every employee has the right to grieve the terms all the way through to arbitration. Our experience is that there are very few frivolous or vexatious complaints or grievances. What happens is that if people start off feeling they actually have a grievance and talk to their steward or get advice from the union in one form or another, we find it is the new information that deals with whether, in fact, something is--I would not call it frivolous--perhaps unfounded, and it gets cleared up very quickly.

We do not have that very many, and we find that when people say, "Oh, well, we are worried because everyone in the world will complain," we find that is not true. Even though every member in our union has the right to grieve and no one can interfere with the union--that is, cannot interfere with that grievance--

Mr. Dean: Do you feel the grievance procedure, if followed conscientiously by the union representatives in trying to educate the complainer, will take care of most of the cases?

Ms. Peters: Yes. It is the education process that takes care of the cases.

Mr. Dean: Let us hope that applies here then too and that the union is being conscientious.

Ms. Peters: I see no reason it will not do so.

Mr. Baetz: I have a general question that relates to the role of the union in this legislation. You start off with your clarion call and you note the Catholic bishops' statement about the traditional role of the labour unions in bringing about social justice, equity and so forth. Fine, I have no argument with that.

Then we get on over to page 7, and you say in paragraph 3, "Let's see unions and employers negotiate the closing of the gap, and where there are no unions, let's see the Pay Equity Commission establish guidelines for employers to gauge the amount of pay equity payouts."

I really wonder whether you feel the traditional role of the union could very well be threatened through this piece of legislation. The reason I ask that is that the role of the union has come up before in delegations. Yesterday we had a representative in here from the United Steelworkers of America, and I think he went out of his way to say he saw nothing in any of this that would threaten the traditional role of the labour unions. Is there a difference between the unions in the public sector and the private sector, or have I read into it some concern that is not really there? What is it? I am speaking in very general terms.

Mr. Clancy: By and large, I think you may be reading something into this which is not there. When we say, "Let's see unions and employers negotiate the closing of the gap," it is as simple as that. By definition, negotiations require two parties, and we are calling for both employers and unions to sit down and negotiate. Keep in mind our points about closing the wage gap and the test to ensure that it has been closed.

In my estimation, our union membership will continue to try to seek counsel and guidance in legislation such as this, regardless of what form it takes.

Mr. Baetz: No problem whatever then?

Mr. Clancy: No. What was said repeatedly, though, is that it should be negotiated wherever possible. It should be subject to free collective bargaining wherever possible.

Mr. Stevenson: I just had a brief supplementary to what Susan was saying. I think my question has largely been answered, but there is the situation under subsections 13(4) and 13(5) and 14(4) and 14(8), the individual employee's ability to question the plan that is established and the difference between an employee under a bargaining unit and one where there is no bargaining unit. I would assume that when you want the employee under a bargaining unit to have an opportunity to complain, you are looking for a different process than that described in section 14. Is that correct?



Ms. Shilton-Lennon: Yes, we are looking for a different process than is provided in 14. Section 14 allows employees to question the plan itself before the plan becomes fixed and approved. Those queries and objections can then be fed into the process of changing the plan. We are talking a different process entirely. The plan is negotiated; the plan is ratified; the plan is deemed to be approved. Employees who subsequently have problems with the way the plan is negotiated will then have a complaint that they were not fairly represented in that process, but those complaints will not then be fed into the plan itself.

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Ms. Gigantes: What would be the implications of that? Suppose an employee complaint was upheld. Then what would happen?

Ms. Shilton Lennon: It would depend on what the complaint was about. When we talk about the analogy of the Labour Relations Act, I think we are talking about the type of jurisprudence where you find a situation that would be an extremely rare situation--in fact, I would say it probably has never happened at all in Ontario--where a complaint an employee made about the way an agreement was negotiated resulted in the setting aside of the agreement.

It might result in various other penalties being assessed against the union if a finding were made that the employee had not been fairly represented, but it would be most unusual for any labour board to consider setting aside the agreement as the appropriate penalty for some error or some problem that had occurred in the process of negotiating it, because of course, the plan applies to everybody. It is simply part of the function of any union that it has to assess the needs of all its members and to make various compromises among the interests of all its members in reaching any kind of an agreement. Not everybody is going to be completely satisfied with the result.

Ms. Gigantes: I can understand that from one point of view. Then from the other point of view, I can imagine a situation where the women involved in a particular situation covered by a negotiated plan might be a minority and might not be adequately represented in the plan by any test in any legislation, however we amend this, if we amend it. Then what you are saying is that you think it would be very rare for the commission to decide to amend the plan.

Ms. Shilton Lennon: To amend the plan would effectively be setting it aside and changing it. It is not inconceivable within the period that--

Ms. Gigantes: What I am curious about is that what you seem to suggest is that if there is a problem about the plan, then only the union is going to bear the responsibility for it if the union is found not to have represented part of its membership fairly. It seems strange. If there is a plan that is unsatisfactory from the point of view of women workers, why should the union bear the total responsibility for that? Why would you not expect the commission instead to say, "Let us amend the plan and let us have it more in accordance with what this legislation is after"?

Mr. Clancy: They may indeed say that, although based on our experience with labour relations, the chances are slim, I suppose, but it is subject to the same sort of--it is an internal discipline system. It is much like the elective system you are a part of in terms of being provincial legislators when you pass laws. It is much more onerous than that because it is subject to ratification by all the effective members.



Ms. Gigantes: Yes, but I cannot be sued by an unhappy constituent. You are setting yourself up to be sued by an unhappy member.

Ms. Peters: I do not think we are setting ourselves up. In fact, this discussion is almost like it is isolating what I see as a fairly small point. I think the important point is that women who--the plan is ratified, they look up and see where they are going to fall and they are not happy with it. From our experience in the office administration group, what happens is that she grieves. That is the kind of process we see once the implementation period is finished.

The Acting Chairman (Mr. Dean): Does that settle that one? I think that was the last question the chairman had on his list before he left. If there are no further questions, we thank you very much for coming, presenting a comprehensive brief and answering us candidly on these things.

The next group that is scheduled, and I presume the people are here, is the Municipal Electric Association. Thank you very much, gentlemen. I guess it is all gentlemen this time, or all males anyway? I hope it is gentlemen. As you see, our format is to hear what you want to tell us first, and then we will try to ask you things that we think we still need to know. We will all try to keep within the scheduled confines, which would be half an hour. After you have spoken for 15 minutes or so, if it would be suitable, maybe you can let us have a crack at it. Please introduce yourselves.

#### MUNICIPAL ELECTRIC ASSOCIATION

Mr. O'Brien: I am Joe O'Brien and I am chairman of the Municipal Electric Association in Ontario. On my right is Mike Millman, manager of the municipal labour relations department and on my left is my chief executive officer, Art Bowker. We represent 310 utilities in Ontario. We have 2.3 million customers we service. We distribute electricity around Ontario through various-sized utilities, some very big such as Toronto, and some very small.

We have been watching this pay equity issue very closely and we have committees studying it. We are strong supporters of the concept, but we are concerned about how we can develop the equity in an industry with such a wide range of size of utilities. As I mentioned, some of them are very big and some are very small. We have some recommendations to submit to the committee with some minor alterations. We are concerned about how we can help advance towards equitable treatment of our industry's personnel. I have Mike Millman here who can make some comments on the submission. He is quite qualified to answer your questions.

Mr. Millman: Is it of some help to go very quickly through the thrust of the recommendations to give you a flavour of what we are looking for?

The Acting Chairman: Yes.

Mr. Millman: The recommendations are sixfold. The primary direction is to have us deemed part of the private sector as opposed to part of the public sector. We see ourselves as very much aligned to private companies. We issue bills and collect revenues. With the 317 utilities, part of the data shows that the reality is we have some 23 that are of 100 employees or more, some 95 that are between 10 and 99 and then 199 rather small utilities that have fewer than 10 employees.

Our feeling is that the real application of the pay equity legislation

is oriented to try to cover the larger organizations. We strongly recommend to trying to have ourselves incorporated into the private sector part of Bill 154. We think there is a stronger rationale in terms of us being aligned that way as opposed to part of the public sector.

Additionally, one of the items we feel quite strongly about is that we see the opportunity of being able to introduce pay equity on an industry-wide basis. The legislation, as currently constituted, orients itself to each establishment. We feel that we have opportunities of working closely with the unions to try to bring the industry under the umbrella of a single job evaluation system. In that way, we can save considerable time, effort and energy. We feel it might be one of the positive thrusts of the legislation to allow that kind of flexibility as opposed to each establishment travelling in its own particular direction.

The third item relates to the consideration of an exclusion of government-sponsored employees. There are many utilities that take advantage of government programs. Those programs often provide employees who may be paid less than the scheduled amounts that are available. If the current legislation does not exclude these people, it may become impossible to take advantage of these programs. We think there should be some elimination of those employees under government-sponsored programs as far as pay equity is concerned. That is a consideration we ask you to look at.

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The fourth item relates to the appropriate comparisons. You have probably heard from many other sources, but in our own case, once you start comparing bargaining units or a nonrepresented group with a represented group, there may be distortions in pay that have nothing to do with gender discrimination but have a lot to do with bargaining strength, the way the unit is organized and the emphasis the organization may give to certain bargaining groups. We ask that the major focus of the legislation really circle in on comparing the relativity of job work within units as opposed to cross-comparison across many units. We see that there can be potentially many difficulties in eliminating those items that are not gender-discriminating factors. That point is enlarged on in point 6.

The fifth item is the issue of value of what people are paid. In essence, we feel it is relatively important to compare the base wages of employees in terms of the relative pay for people as opposed to comparing necessarily the additives that may come in, such as overtime, on-call and standby pay. It is quite possible that there can be an increment in an employee's salary, based on these additional costs, that may be 10 or 15 per cent above the base pay. If there is a comparison of that additional amount of money, there can be a distortion in the kind of compensation that is compared. We certainly recommend that the comparison should be made on base pay as opposed to overtime additives and other kinds of compensation that often come into play.

The sixth item relates to a trend that has been very widespread in the United States and is certainly occurring in Canada and in our industry, in which two-tiered rates are often negotiated. Which rate would receive the pay equity comparison? We obviously recommend that it be the lower of the two rates. These rates are often developed on the basis of, "We look at appropriate relativities."

The final item within that point six relates to the aspect of often



comparing male jobs to female jobs and ensuring there is no gender discrimination. We do have situations where it is possible for high school employees, as a result of injury, to end up in lower-skilled jobs with rates that may be higher than normal. When relating those jobs, it is important to consider the analysis of the reasons those rates may be somewhat different than those normal marketing conditions may produce.

The basic thrust, first and foremost, is to orient ourselves towards the private sector and take a look at some of the specifics within the legislation that we have some concerns about.

On the very last page, we are suggesting that certain things might be clarified within the confines of the legislation, essentially the definitions of the very factors upon which jobs are going to be evaluated. We see that there does need to be a complete understanding of what we mean by "skill," "effort," "responsibility" and "working conditions."

There appears to be a potential contradiction with the direction of the law when one relates subsections 6(2) and 7(2). Subsection 6(2) states, "No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1)." Subsection 1 talks about having pay equity across the establishment. But subsection 7(2) states, "After pay equity has been achieved in an establishment, this act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength."

We see the possibility of some conflict as to the thrust of the law. Which is taking precedence, the establishment of pay equity or the creation of possible differences through negotiation processes? It certainly has produced some confusion on our part as to which would have the priority.

The last part relates again to clarification of what is meant by "formal seniority systems," what is meant by "temporary employee," and where possible, to specify the criteria of what is a "job shortage." We hope it is not used as an overall crutch that suddenly the male-dominated jobs, which happen to be higher than female, are all a result of skill shortages. We would ask that very specific criteria be developed to assist in that process of effectively determining what "short shortages" really means. That is the basic thrust of the comments we have for you today.

Mr. Bowker: It might be worth noting in passing that the Municipal Electric Association has for a little over a year now been getting under way a project study regarding pay equity, since we felt it was an issue that was coming up to its time. We would hope that any legislation that came out would permit us to continue with the study.

As pointed out in our brief, we feel a process that could be applied fairly uniformly across our industry would be much preferable to picking out one establishment at a time and dealing with it in a piecemeal fashion. To that end, we have a project we hope to be finishing within about six months. It would provide all our utility members with a rational approach to measuring jobs, analysing the content and skills, conducting a pay equity audit, if you will, and providing job evaluation criteria, so one could be sure, first, that we were establishing an equitable position as a base, and second, that it would provide a means for monitoring the situation on a continuing basis.



If the legislation is going to make that difficult, we feel we will have lost quite a bit of ground we have made in the last few months.

The Acting Chairman: Thank you. It is interesting to note that you are in the business already. I would think it would certainly be something the committee would want to keep in mind as it gets into the detail of the act.

Mr. Bowker: I can assure you that we are aware of the problems. There are a lot more than we thought there would be at the beginning, but at least we feel we are tackling them.

The Acting Chairman: Now we are ready for questions.

Mr. Charlton: Thank you, gentlemen, for your presentation. There are two areas of your brief that I would like some clarification on, because they are causing me some confusion.

First, perhaps you can explain more specifically why the private sector is the route you would prefer. I will explain what my confusion is, so maybe you can direct some comments to that. As I see it, there are two potential reasons for asking for private sector status. One is the longer time to implement; the other is whether you have to produce a plan.

In the public sector, everybody is going to produce a plan regardless of size. In your case, if you are public sector, all the utilities are going to produce a plan. If you go to the private sector, 90 per cent of the utilities in the province will not have to produce a plan, yet in item 2, you are saying, "Let us have the flexibility, industry-wide, to decide how we are going to do the plans." It does not seem to me there is any rationale for saying the large utilities will be able to do a plan and the small utilities will not be able to do a plan if you have agreed on the system industry-wide.

Mr. Millman: Your question is a good one. The orientation on the first part with regard to the private sector is that we really see the thrust of the legislation as ensuring the major-sized organizations in this province are covered under pay equity.

It was our feeling that there might not have been a realization of the structure of our industry as it is presently constituted. We see in utilities of fewer than 10 people that the issues the legislation is oriented to address are not necessarily covered by those groups. There are obviously advantages in terms of time, effort and energy, and we are here to be open and candid with you in that regard, but we do see that the major thrust is to try to cover the large organizations. If we took the 20 per cent largest utilities, they would cover 80 to 90 per cent of all the employees in this province and that is where we feel the direction should be.

Relative to your second question, we feel there should be pay equity analysis done regardless of the size of the organization. Whether or not you finally go into job evaluation should be a function of size, not just the fact that you have done it and are compelled, even if you are a utility of very small numbers of people. We really do not believe that would be necessary.

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If we do as we are suggesting in recommendation 2--establish a basis by which we can do a pay equity audit--this does not mean that every utility would have to go into job evaluation. In essence, it would be only the largest ones, and they would be the only ones that would really need it.

There is a two-staging of this. One is, regardless of whether we are private or public, there should be a pay equity audit done to see whether there are any distortions. If we are on the private side of it, we are then in a position of only the major kinds of utilities being compelled to go to job evaluation. We see some real advantages in that.

Mr. Bowker: I think it should be noted too that in our industry there is a lot of interaction between the various utilities. Even though there is not a compulsion for smaller utilities to do things, we will discover, for instance, that we have a remarkable level of uniformity or structure defined with regard to some of the specialized trades in the industry.

A small utility tends to be watching its salaries in relationship to the larger utilities and while it does not provide a legal constraint to do this or there may not even be union agreement in those areas, we find that the practices of the larger utilities through this mechanism filter down to the smaller ones quite quickly. It has been effective in maintaining some degree of uniformity, even though there is not a stated mechanism or policy for forcing that.

Mr. Charlton: The second question I have that I wanted some further comment on is recommendation 4. It seems to me that recommendation 4 sets out the classic and dire need for cross-bargaining-unit comparisons. You have set out the classic case of the union with the membership that is mostly female and male job classes of any value in that unit. We have the very simple problem that in the unit dominated by females, it is not only the female jobs that are likely to be undervalued. Any small number of male jobs that happen to get thrown in there are likely to be undervalued as well, simply because of this systemic discrimination that is society-wide. If we cannot do those cross-bargaining-unit comparisons, we are not going to get any of that.

Mr. Millman: If the accomplishment is to ensure that we have fairness between bargaining strength in units, obviously the comparison of one bargaining unit against the other is going to do that. It is our understanding that the thrust of the legislation is to deal with gender discrimination and not with bargaining strength.

Mr. Charlton: I was not talking about bargaining strength. In a utility if you have two units--

Mr. Millman: Which we do.

Mr. Charlton: You have one that is the outside operational unit and one that is the clerical unit. The clerical unit is part of that systemic societal discrimination against women and the value of the work they do.

Mr. Millman: We probably could debate this for a considerable period of time. We certainly see that there are differences in terms of what occurs in wage settlements depending on bargaining strength. It is there. It has occurred for many years. All our concern is that we do not want to confuse bargaining strength with gender discrimination, and we would simply ask that when the law is finally constituted, it have some sensitivity to that.

Mr. Charlton: Here is my point, I guess. I made this point once yesterday. If you have two units and you do a cross-bargaining-unit comparison and one unit happens to have lower wages than the other across the board on both male and female employees and both units happen to be male dominated, then nobody is going to be able to demonstrate in any significant way that that difference in wages is a result of gender bias.



If there is no gender bias, the cross-bargaining-unit comparison is not going to be a problem. If we can identify gender bias in the cross-bargaining-unit comparison, it is a valid process to have gone through.

Mr. Millman: We agree.

Mr. Bowker: Further, I point out that we hope the study we have under way will identify those particular problems. We are not in a good position at this point to say there is or there is not a problem there, but I will bet that six months from now we will be able to tell you. We are not trying to avoid the issue, but if there is a problem from a service point of view in our utilities that one bargaining unit has been able to extract higher wages because of the more critical nature of its part of the operation, we do not want that to be mixed up with the issue.

Mr. Charlton: We would be interested in seeing that study when it is finished, regardless of where we happen to be.

Mr. Bowker: It certainly will be made public.

Ms. Gigantes: I will be very brief. It just occurred to me that if there is a power breakdown in the system in one of your utilities and there is not a gentleman in the outside work crew to fix it, that is critical, but if there is not a lady to answer the phone to tell the gentleman to go, that could be critical too. This decision on what is critical, again, is something that is influenced by our stereotypes.

Mr. Bowker: That is true and not only by our own perceptions of the problem but also by the manner in which the utility is organized to respond. That is mixed up with the size of the utility, the manner in which the manager of that utility chooses or is forced to organize the response to such issues and a large number of other factors. I hope we can sort some of those out. You are definitely right.

Ms. Gigantes: Can I go back to your recommendation 2? You are already advanced in this business of doing a self-assessment of your association and its member components. You are going to come up with what looks like some kind of overall guidelines for members of your association in view of their responsibilities to implement legislation in this field. What is to prevent the application of what you are looking for in recommendation 2, given the legislation even as we have it now?

Surely what you are going to be doing is suggesting to your member utilities of a certain size, 10 or 12 employees: "This is probably the easiest way for you to go. Do a checklist and make a few comparisons." It is not going to cost them much or take an awful lot of time, skill, effort or responsibility in miserable working conditions. You are really going to have a pretty flexible approach that you can suggest your member components use.

Mr. Millman: Absolutely.

Ms. Gigantes: So what is the problem?

Mr. Millman: We did not view this as necessarily a problem, but rather as an opportunity for the legislation to take a wider focus. We will proceed. We can operate as the legislation is currently constituted, but we felt there might be an opportunity for a greater promotion of industry-wide views, as opposed to the view of each establishment.



Ms. Gigantes: It interests me because the hospital workers negotiate on an industry-wide basis, and they and the Ontario Hospital Association would like to continue doing that. I do not think any of us wants to impede that. On the other hand, you have suggested that what you want to do is set out your approach, analysis, assistance and guidelines to your member utilities but you want to have them look after the implementation on it.

Mr. Millman: That is correct.

Ms. Gigantes: You do not negotiate on it, so what is the problem? I still do not understand it.

Mr. Millman: With great respect, the recommendation was not brought forward as a problem, but more as an opportunity. We are not the only organization that has industry-wide interests. There are others. Our thought was that rather than the legislation limiting it just to establishment, it may wish to take a wider focus.

We do not see that the current legislation restricts us from doing what we are doing. We are rather suggesting that you may wish to enlarge the current legislation to try to promote industry-wide work. Certainly, from our point of view, there are tremendous economies of scale.

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Ms. Gigantes: That is right.

Mr. Millman: It may be that some areas are missing that opportunity and have suddenly realized that individually it is going to be very expensive, but collectively it may be far easier for many organizations to look at the same kind of thing we are looking at. With great respect, it was not viewed as a limitation, but rather as an opportunity for the legislation to expand itself.

Ms. Gigantes: I thank you for that.

Mr. Stevenson: Very briefly, the Association of Municipalities of Ontario was in here this morning and stated some concern that various boards and commissions at the municipal level might get included with some of the more strictly municipal duties, management sorts of things, under the current definition of "establishment."

Do you feel that the way your individual groups are constituted, you have no problem with the current definition of "establishment"?

Mr. Millman: No. We are very fortunate, because each utility is unique to a particular geographic situation. That is not a problem.

Mr. Baetz: I would be interested to know how much movement there has been within the industry generally of males and females crossing from what have been predominantly male and predominantly female job groups. My meter man has long since become a meter maid. How big is it, anyway?

Mr. Millman: An educated guess would be that it is evolutionary, but I think it is a long way from where it could be.

Mr. Baetz: It is very slow.

Mr. Millman: It is, because the backup issue is really to get back

into the educational system. There are still a limited number of people coming out of what have been traditionally male-dominated educational forums. They are still traditionally male-dominated educational forums, and we cannot restructure that. It is a very slow process, but it is gradually changing.

Mr. Baetz: How many women are part of the so-called hydro crews that are out there?

Mr. Millman: A very minor number.

Mr. Baetz: It is very slow.

Mr. Millman: Yes. The same is true of the inside work. For instance, there is a lot of engineering work that goes on. When such a small fraction of the professional engineers who are available are women, what can you do?

Mr. Baetz: Of course, the same would not be true of the line crew where, I imagine, women with a grade 12 education or some technical education could easily qualify for those jobs.

Mr. Millman: They could easily qualify, yet it does not happen. We do not get many female applicants applying for traditionally male jobs. As yet, it is just not there.

The Acting Chairman: Thank you. I believe those are all the questions anyone wishes to ask. We appreciate your coming here and giving us a very brief but effective submission on how you see it affecting you. I commend you on behalf of the committee for having gone ahead on your own, in any case. That shows what some people have contended, that the system can look after itself if there is a will to do so.

Mr. O'Brien: Thank you very much, Mr. Chairman. It is very important legislation coming up, and it certainly please us that you are so concerned over it and acting so diligently on it. Thank you for your time.

The Acting Chairman: The next group that is scheduled to appear before us consists of representatives from the Council of Ontario Universities. Would the members come forward, please?

Welcome, ladies and gentlemen. We appreciate your taking the time to come here in person to present your brief. As you probably know, our format is that we let you have your say for whatever time you feel is necessary. Then, we hope you will leave us half an hour or so to ask questions, in case something is not clear or we wish to have your opinion on something you have not touched upon in your brief. Please introduce yourselves and proceed.

#### COUNCIL OF ONTARIO UNIVERSITIES

Mr. Farr: Thank you. My name is Bill Farr. I am vice-president of finance and administration at York University. My colleagues are Professor Mary Morton, a sociologist from Queen's University, Dr. Laura Selleck from the staff of the Council of Ontario Universities and Bruce MacDougall who is the executive director of the council of senior administrative officers of Ontario universities.

We are presenting this brief, which has been supplied to you just now, on behalf of the Council of Ontario Universities, which represents the 16 publicly funded degree-granting institutions of higher education in Ontario.



Those 16 institutions employ some 13,000 full-time faculty, divided approximately four to one between men and women. In addition, there are probably another 4,000 to 5,000 part-time faculty, probably divided about 50-50. Finally, there are approximately 20,000 nonacademic staff of whom between 55 and 60 per cent are women. In aggregate then, we are a substantial employer in this province.

The COU supports the objectives of pay equity. We believe that it is the right thing to do and that it is overdue. It is probably also overdue in many of our institutions, and we recognize that we have a job to do to live up to the legislation that is before your committee. We accept that it will become complicated and time-consuming to do that job, even to arrive at an imperfect achievement of the pay equity objective. Accepting those burdens which are about to come on us all the same, we think the bill as it stands does pose some problems in definition, in terminology and in some of its procedures. It is to these problems, essentially, that our brief is addressed.

The first issue is the practical problem of whether to include full-time faculty members in an establishment-wide job evaluation system. For any university there is a fundamental mystery involved in deciding just what the faculty job is, since faculty members do so many jobs: teaching, research, community service and administrative work. In addressing the pay equity legislation, it will be necessary to decide whether those are a set of jobs or whether there is one job, the job of a faculty member, in which the proportion of time given over to various duties varies from person to person.

If the legislation and the regulation opts for the many jobs option, we are going to have a terribly difficult time. An assistant professor does essentially the same work as a full professor. A person teaching languages does essentially the same job as a person teaching engineering. A full professor may not be teaching at all in a given term while doing research or may be doing overload teaching in another term. Our preference, I think, is to approach the faculty job as one job rather than to get into a situation of subdivision.

If the problem of comparing subgroups within faculties is hard, then I would submit that the problem of comparing nonfaculty groups with faculty is even harder. It may be that an exemption of faculty from the application of this legislation is the simplest way out of that conundrum. Since some universities have unionized faculties--seven of them, I believe--and the others have nonunionized faculties, it seems to us also that the potential impact of this bill could vary considerably.

We suggest that the committee think about what happens to unionized, as distinct from nonunionized, faculty who are doing the same job in very similar institutions, but where the fact of unionization or nonunionization may produce quite different comparison results.

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A similar kind of problem applies to graduate teaching assistants and graduate research assistants, whose pay for their part-time work, at most universities, combines an element of student assistance and an element of fee for service. Using a pay scale that involves student aid for pay equity comparison purposes seems to us to be inappropriate. I think there is going to have to be some kind of sensitivity not only to the faculty jobs but also to what the pay is intended to do in some of these student-related jobs.



Moving on then to the questions of cost, like other employers who have been appearing before this committee, the universities are naturally concerned with the costs of the machinery and the equity adjustments. We do not know what the cost of the equity adjustments will be. We do know that one per cent of the university's payroll is about \$15 million. Less than four per cent in equity costs would therefore more than nullify the \$50 million of improved funding the government announced for universities this year. We are concerned therefore that laudable initiatives by different branches of the government not turn out to have self-cancelling effects when it comes to their financial impacts on the universities.

We are also most concerned about the cost of administration. After many years of underfunding, the universities have learned to get along with a relatively spare service infrastructures on the nonacademic side of their work. The implementation of this legislation will call for the deployment of a great deal of time and increasingly expensive expertise in the areas of job measurement and evaluation and probably equal amounts of time and expertise in the presentation and negotiation of pay equity data and plans with various known and unknown employee groups.

We see this effectively as a net administrative cost that will have to be borne on top of our regular funding. We hope it will be funded for us. Our regular funding is 95 per cent government controlled. If we do not get help with these costs, they will have to come straight out of our precious program funding.

As we have set out on pages 4 and 5 of the brief, we are also concerned with some questions of terminology. The clear demarcation between certified bargaining units and any other employee groups seems to us to create circumstances in which quite different equity results can occur, depending upon the degree or pattern of unionization at different institutions. The brief notes also that there are a number of circumstances in which there are established bargaining relationships between universities and employee groups, despite the absence of union certification. We believe that consideration should be given to recognizing these formally established relationships for group definition purposes.

You will note that we are also concerned with such definitions as "job rate" and "compensation," which are used in ways that will require clarification in a redraft of the bill.

Finally, we are concerned that this legislation is going to create an administrative burden in its implementation that may well take much longer to work through than the current timetable envisages. As part of the broader public sector, we would get a year to bring this all to pass in the universities. We are very much worried that we would just end up not being able to do it.

Some of the time requirement lies in doing the classification work, but a good deal of it derives from the uncertainty under the legislation as to the groups for which plans and comparisons have to be prepared. At our institution, York University, for instance, we have mostly unionized staff, but there are segments of the unionized employee groups that are excluded from the union. Most of you will be familiar with the supervisory or confidentiality exclusions from union bargaining units.

Those people who are working in first-line supervisory tasks have jobs and pay that are more closely related to the union people they work with than

to one another. Yet under the legislation as we read it all the people excluded from bargaining units for one reason or another and all the managerial personnel would be put in one big nonunionized group, which would then have within it a variety of identifiable groups of one degree or another of male or female composition.

Instead of relating secretarial supervisors to secretaries or caretaking supervisors to caretakers, we will have to relate caretaking supervisors, secretarial supervisors, deans of faculties, presidents and vice-presidents. The latter group does not fear the comparison, but we doubt the logic of that kind of definition. We fear the time and difficulty entailed in making what seem to us to be forced rather than natural comparisons. At the foot of page 6 in our brief, therefore, we have proposed a less rigorous schedule for implementation. We hope you can give such matters your serious consideration.

We will be prepared to answer questions, but my colleague Professor Morton represents the Council of Ontario Universities committee on the status of women and will add a few comments from that perspective, with your permission.

Dr. Morton: I will be very brief. I would just like to say, on behalf of the status of women committee of the Council of Ontario Universities, we are very pleased to be able to speak to you and to underline our concern for pay equity, our concern that the principles of pay equity must be articulated with the principles of employment equity which have been matters the status of women committee has been concerned with, on behalf of the universities of Ontario, since its inception approximately two years ago. If you have any questions you would like to address particularly to the status of women committee, I would be very happy to try to answer them.

The Acting Chairman: Is there anyone else from your delegation, Mr. Farr, who would like to make any comments at this point?

Mr. Farr: I do not think so.

The Acting Chairman: Then a few of our people wish to ask questions.

Ms. Gigantes: Thank you for your presentation. Could I ask you about page 2, the bottom paragraph, in which you are talking about graduate teaching and research assistants and the difficulty of locating them, as it were, within legislation dealing with equal pay. There are universities, if I am not incorrect, that have associations of graduate and teaching assistants.

Mr. Farr: That is true. There are several unionized bargaining units of graduate teaching assistants.

Ms. Gigantes: Within the Canadian Union of Public Employees locals, in Ottawa.

Mr. Farr: In Ottawa there is a CUPE local. At York, McMaster and Toronto we have the Canadian Union of Educational Workers.

Ms. Gigantes: If some universities have been able to deal with these kinds of positions as employees, why would other universities not be able to do that?

Mr. Farr: We have been able to deal with the graduate teaching assistants as employees because the Labor Relations Act tells us to. That made



it easy. Determining the rates of pay is not a market-driven exercise. It is a negotiation-driven exercise and a university-policy-driven exercise, since we wish to have our rates of pay for graduate teaching assistants competitive with the levels of graduate student aid made available in institutions where the money is provided in the form of scholarship rather than fee for service. The question we face is whether the rate of pay relates to the work when you begin to compare work inside that unit to work outside.

Ms. Gigantes: When you are talking about the way the pay now is determined, you talk about the market and you talk about university policy, but this legislation calls upon us to review both.

Mr. Farr: For instance, we have at York two units of the Canadian Union of Educational Workers. One represents graduate teaching assistants and one represents part-time faculty members who are not students. We pay those two units different rates of pay for doing exactly the same work. We negotiate different rates because one of the units represents graduate students, to whom we wish to give more money because it is a form of student assistance. So there we have an internal market that we have defied. We live with it and we live reasonably comfortably with it. It is just that if you bring external definitions down on top of it, they have to represent that those rates of pay are doing different things than just providing fee-for-service.

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Ms. Gigantes: Would I be fair if I guessed that most of your part-time faculty would be women and most of your graduate student teaching assistants would be men?

Mr. Farr: No. You would be in the right direction. The proportion of graduate students will be skewed towards men. The part-time faculty may be as much as 50-50 male-female, but I doubt that it swings much past that.

Ms. Gigantes: Can I refer also then to your question on page 5 in the second paragraph. In the second sentence of that paragraph, you say, "While this definition"--here we are talking about job rate--"is appropriate for government compensation systems, job rate has an accepted meaning in compensation practice, related to the matching of salaries for market comparison purposes." I wonder if you could explain that.

Mr. Farr: This really is a question of what job rate means. In some pay systems, a person comes in at an entry rate and proceeds, after a period of probation, good service or whatever, to the top rate they are ever going to get in that position. They call that the job rate.

In quite a number of other pay systems, a person comes in at the bottom and moves to the mid-point of a range after a given period, but can, for purposes of merit or outstanding performance, move to a percentage beyond the range. A typical range system would have a mid-point with an entry 20 per cent below it and a maximum 20 per cent above it. In such systems, the mid-point is usually called the job rate and, therefore, in terms of the legislation, to say that the job rate is the highest rate in a classification is just misleading.

Our joint committee of administrative officers on the status of women had a very useful talk with the representative from the ministry during which we made this point. I think it was taken that what is needed is a generic



definition, that job rate really ought to be that rate that most people expect to be earning when they have had a period of mature service in that job.

Ms. Gigantes: The first job rate that you described is the kind that is usually associated with men's work and the second with women's work, if I read the kinds of responses I have had from people who work, for example, at universities in Ottawa. So I think your point is very well taken. If we are going to try to compare women's work with all these job levels, really the one we ought to be looking at is the one that most women achieve. There may be nobody in the other two categories above that.

Mr. Farr: We appreciate that the point is well taken. I would not agree that you can associate them in that way. At my university, we have a secretarial unit of almost 1,200 women who are in the entry job rate. Our managerial group, which has about 300, uses the 80 per cent to 120 per cent range around the job rate and has a majority of men. So there is a for instance that runs contrary to your expectation. I think that is true of Toronto.

Mr. MacDougall: Could I interject on this?

Ms. Gigantes: I may not have explained what I meant.

Mr. MacDougall: I think the difference is that a job rate, which is the maximum paid, is more typical of union contracts because they are concerned with equity, where everyone should make the same amount of money. The mid-point really grew up out of the professional ranks where, after someone has become fully competent, you want to be able to reward greater productivity and superior performance above the job rate that, by definition, is the median salary of whatever you define your marketplace to be. So if you define your marketplace to be all industry in greater Toronto, the median salary is what the survey is calling the job rate, and then you are taking your job rate and matching to it. If you are matching on a policy basis, you want to pay that, you want to pay above it, or you want to pay below it. So I think that is more correctly the difference.

Ms. Gigantes: I had examples given to me--this is my last comment, Mr. Chairman--in university settings where the comparable male job might include two levels. After a certain period of qualification in the position, most of the males would move to the second level. The female job class being compared might have five or six levels, and there might be nobody in the top two. Yet under this legislation, we would be asked to compare that top empty female level with the male comparable and achieve very little under this legislation.

Mr. Farr: That could happen.

The Acting Chairman: Do any other members have a question? I guess everything must have been made perfectly clear. We usually have three or four, but perhaps we will have some further questions later. We can get hold of you some time later if there are other questions.

Mr. Farr: I would be glad to co-operate.

The Acting Chairman: We appreciate your coming and giving us a submission that has some new examples and concepts in it that will be very helpful for us to review.

Since we are a little ahead of schedule--not much--we will have a 10-minute break, and assume our people will be here by then.

The committee recessed at 4:57 p.m.

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Mr. Chairman: I believe we can resume our discussions on Bill 154. We are pleased to have representatives of General Motors of Canada with us this afternoon, and we look forward to your input on this very important bill. Let me welcome all of you.

We would ask you to introduce yourselves and following that, to make a statement with respect to your position on the bill. If you would leave some time for questions, that would be appreciated as well, since you will find that this committee does like to ask the odd question here and there.

Welcome to our discussions, and you can proceed whenever you are ready.

GENERAL MOTORS OF CANADA LTD.

Mr. Curd: Thank you members of the committee. On behalf of General Motors we are glad to be here. We will start with the introductions.

Ms. Pratt: My name is Margaret Pratt and I am the employment equity coordinator for General Motors of Canada.

Mr. Curd: My name is Rick Curd and I am the vice-president, personnel, for General Motors of Canada.

Ms. Wakefield: I am Tayce Wakefield, a government relations representative for General Motors of Canada.

Miss Christie: I am Miriam Christie, also a government relations representative.

Mr. Curd: I have a few preliminary comments that will tie together some of the remarks we make concerning the state of the automotive industry. We anticipate that by 1990, supply will exceed demand in North America by about three million units. To us, that is an excess capacity of 20 per cent or the equivalent of 10 assembly plants. When we say that we are in a fight for our competitive life in Canada and in North America, it is something that we believe.

In the past six years General Motors of Canada has lost almost 11 per cent of market share, chiefly to competitors from low-labour-rate countries offshore. In comparison to what our workers receive--what we believe to be a generous and comprehensive compensation package in the neighbourhood of \$23 per hour--workers in these countries earn substantially less, some of them in the vicinity of \$2 per hour.

This gives these companies a superior advantage over us. Some estimate that the differential of Asian versus North American cars is as much as \$2,500 per car. You can find different figures but by any study the difference is substantial.

We are fighting to take costs out of our cars. We are introducing new



technology to cut costs. We are making capital expenditures. GM has announced around \$7 billion of investment in Canada over the past several years. This is a slow process, and believe it or not, we count our successes in pennies.

When we read the paper and see that a company counts its profit in billions of dollars, it is sometimes hard to put that in the perspective of a competitive fight, yet our aftertax profit as a percentage of sales is about 2.5 per cent, a figure that is entirely unsatisfactory to us.

We believe that what we pay our employees is fair and equitable. In our salaried ranks, for example, nurses are paid in the same pay range as general accountants. Executive secretaries are in the same level as some of our engineers.

On the hourly side of the house, the hourly wages of our entire 45,000 semi-skilled and production workers are within a range of \$1 per hour from the lowest to the highest.

We have only a limited number of female-dominated jobs on the hourly side out of several hundred job classifications, and these jobs are compensated with the range of the male hourly pay rates.

To address the issue of occupational segregation we are developing a positive employment equity program. Ms. Pratt is currently the director of our employment equity activity and she reports directly to me.

Working with the Canadian Auto Workers, we have affirmative action committees in each plant which are working to improve opportunities for women, the visible minorities, native Canadians and the disabled. The number of women in senior management has tripled in the past year. In fact, our Treasurer is in what the legislation would define as a female-dominated classification since she is the only person who is the Treasurer of our company. She is on our board of directors. She happens to be on maternity leave at the moment and will be back in April.

Another executive, the director of salaried personnel for General Motors of Canada, is a woman. She is currently on a fully paid educational leave at Stanford University, and I hope she will be back on my staff with her MBA in June.

There has been a 43 per cent increase in the representation of women in the manufacturing organization. We are making great strides with our employment equity program and we intend to keep these trends going in the direction that they are going.

Bill 154 presumes that employers are guilty of discrimination in pay until they can prove by job evaluation that they in fact do pay equitably. We believe this is an affront to companies, such as General Motors of Canada, with long-established histories of fair employment practices. The upfront costs to prove that we do pay equitably are not inconsiderable. We believe that those kind of costs will not add value to our product or our organization, nor will they improve the lot of any of our employees.

Our hourly rates have been negotiated with the CAW for many years. Our salaried job descriptions and levelling system are international in scope, and the established relationships between all jobs in Canada are the same in General Motors organizations throughout the world. This system certainly seems to be working well for us. We are not sure exactly how to estimate the cost of



the legislation to us, as it is presently proposed, but, without too much trouble, we can spend up to \$1 million in consulting fees and internal costs simply to prove that we do pay equitably. At the time when we are trying to take pennies out of our cars on a cost basis, an additional cost of \$2 a car, which \$1 million represents, is not satisfactory to us, particularly when, in our view, there is no demonstrated need for pay equity adjustments in our organization.

According to a study done by ARA Consultants for the Ontario women's directorate in connection with pay equity, only 10 per cent of companies in the transportation equipment sector have job evaluation schemes of the type considered by the pay equity legislation. We are concerned that the costs each of us will have to bear to implement job evaluation schemes are unwarranted and a waste of resources. The cost that our suppliers will have to bear will be passed on to us and ultimately to the customer.

We believe that what Bill 154 legislates is job evaluation schemes for all large employers in Ontario. In looking out from our company, we have a hard time finding anyone other than the consultant firms in the evaluation field as being the beneficiaries.

There are other serious problems with the pay equity legislation to which we draw your attention. If Ontario passes this legislation, we will be the first jurisdiction to implement a proactive model of pay equity for the private sector. Not only is there no other jurisdiction to provide private sector experience; there is also no true estimate of the cost of this type of legislation. In its green paper on pay equity, the Ontario government committed itself to expect no more of other employers than it would be willing to undertake. At this time, the government has not gone any further with equal value legislation for the narrow public sector than it has for the private sector. The Ontario government should be prepared to test the proactive model itself first, placing it in a better position to understand the costs and ramifications it is imposing on the private sector. Any experience gained in implementation would assist others at a later date if equal value legislation were found to be a valid policy approach.

Section 4 of the act specifies the criteria to be applied in determining the "value of work" performed. These criteria of skill, effort, responsibility and working conditions will form the basis for comparison between the gender-dominated jobs. Job evaluation can be a useful tool in the wage-setting process, but heavy reliance on this type of system, without regard to the influence of market forces, might institutionalize a series of job descriptions and build rigidity into the evaluation.

Many manufacturing firms are discovering that to remain competitive, they need a highly flexible work force. For example, the Japanese car plants have only two or three basic jobs, the content of which may change significantly from one day to another, depending on the need for a certain skill or task to be performed.

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By way of information, over the last year or so, I have had a lot of contact with the Japanese manufacturers, both in relation to our CAMI Automotive Inc. operation which is going into Ingersoll and a number of other situations. In their system, they pay the person, not the job. They are concerned with the prior experience, the seniority, the education, the attendance and other factors related to the person, not the specific work he

performs. The specific work is certainly a factor, but these other items come into play.

Our competitors from Asia seem to have maximum flexibility in scheduling, in labour force planning and in designing manufacturing processes. This flexibility accounts in part for their competitive edge, and we believe we must be allowed the flexibility to compete within the global environment.

Job evaluation is not an exact science, and even the most refined evaluation techniques are not capable of producing absolute measurements of job worth. Two people doing the same job evaluation, both acting fairly and in an unbiased manner, could arrive at substantially different conclusions.

We looked at some comparable-worth studies in the United States and found them interesting. Wisconsin's evaluation indicates that nurses are "worth" 50 per cent more than electricians, while in Minnesota they are "worth" 20 per cent less. The value of jobs is not found on the job site, but rather exists subjectively in the minds of those who perform or evaluate the job. Ultimately, the marketplace arbitrates the accuracy of the scheme by providing prices for the equation.

We are convinced that this search for a measure of intrinsic job worth, divorced from market wages, is a misguided effort. I would like to share with the committee some comments from a letter our president sent to all employees this week. It addresses, again, the competitive environment.

This is what our president said to all employees: "The competitive environment facing GM and GM of Canada is unlike any we have ever experienced. To meet the challenges of today, all aspects of our business, including compensation practices, must be re-examined to ensure they enable GM to compete more effectively.

"As most of us are aware, average total compensation, i.e. salaries and benefits for classified salaried employees at GM, generally exceed the levels provided by many other major companies, including some of our own Canadian competitors."

This announcement in this letter happened to be in connection with our announcement of our merit plan for the next year, whereby we were going to increase the wages of our employees. I read that to you by way of pointing out how concerned we are about adding any cost to our operation that does not have a concurrent increase in value.

Currently, compensation is based on a host of factors, not the least of which is labour availability. Within GM, salaried-job descriptions and pay scales are corporately determined, and hourly pay rates are negotiated by the corporation with employee representatives. Internally, positions are assessed on the basis of many factors relative to other classifications and market forces. General Motors surveys between 15 and 20 leading Canadian firms annually as part of the process in evaluating salaries for specific job classifications and in determining the salaried-compensation budget for the upcoming year.

In a telephone survey conducted by consultants for the Ontario government last year, almost 40 per cent of the firms responding used market surveys of their industry or occupational group as part of their determination of pay levels, while 74 per cent of the firms surveyed used existing market data in determining wages. With equal value legislation, external



comparisons will be impossible, since pay rates will be irrelevant to one another and the fundamental law of supply and demand in determining the price will be ignored.

If we are to remain a viable entity in the North American auto industry, we need to control our payroll costs. Simply put, we cannot afford the implementation costs of a job evaluation scheme, the administration costs on an ongoing basis of such a scheme for no demonstrated return or any artificial adjustments such a scheme may dictate. This is the reality we believe we face.

The effect of Bill 154 on the collective bargaining process could be dramatic. The historic process of negotiating pay increases will be increasingly complex. General Motors is involved in fair, contractual negotiations with our employees' representatives. The ability of a third party, either a review officer or the Pay Equity Commission, to determine that pay rates negotiated in good faith between the parties are unsatisfactory or to decide any issues related to the pay equity plan is potentially disruptive.

One of the interesting things I find in looking at this topic is to think about the bargaining experience I have had over the past 24 years, and that is where I have spent most of my career. In looking at how specific wages for specific jobs have been determined, there is an awful lot of history behind the rate for a particular job.

Long ago, we agreed with the United Auto Workers, now the Canadian Auto Workers, that the concept of technological improvement that increases productivity is a good idea. As we made technological improvements, the concept we arrived at through the bargaining process was that as we made technological changes that made work easier or demanded less skill or fewer people, the company would reap the benefit of the productivity increases.

We agreed with the union that we would not cut rates as a result. Just what does that mean? Take a look at material handlers, who for many years performed the heavier jobs in the plant. We paid a premium, because they performed heavy work. As we automated those jobs and put in automatic material-handling equipment so that the effort required was no longer the same, we did not cut back the rate to match the effort. Rather, we fulfilled the bargain we made that we would not cut the rate as technology makes a job easier, less complicated or requiring less skill. We left the rate the same, and the company reaped the benefit of having to use fewer people.

We believe that if we disrupt our existing relationships, an increase in grievances could be expected and the relative pay relationships negotiated by the parties would be upset. There is an inherent conflict between determining compensation levels by collective bargaining and setting pay by third-party decision.

While we oppose pay equity legislation in principle, we have a number of suggestions to improve Bill 154. We strongly suggest it be amended to make it a complaint-based policy. Where individual employees or groups of employees have legitimate concern about the pay rates they receive, they should be allowed to make complaints and bring these to the attention of the government.

In regard to the definitions in the bill:

Where employers do pay fairly, they should not have to bear the additional costs of implementing a job evaluation scheme simply to comply with the legislation. The individual employer should determine whether



"compensation" includes benefits as well as wages and salaries. If benefits are included, it should be on the basis of the cost or availability of those benefits, not the use or receipt of them.

As to "employee," the legislation should apply only to full-time and regular permanent part-time employees, and subsection 7(4) should be deleted. The need for industry to supplement the work force to meet peaks in demand could be hindered by the additional administrative burden associated with including casual employees under this legislation. Therefore, the opportunity for temporary work could be eliminated for those who need it.

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"Establishment" should have both a geographic and functional dimension. If a company operates separate business units in the same geographic area, they may share record-keeping systems or payroll systems, but they are entirely distinguishable units with separate products and markets and they should be viewed as separate establishments. In the Oshawa complex, we have a plant that manufactures batteries, a plant that manufactures trucks, a plant that manufactures cars and a metal fab plant. We believe that the way you look at the jobs in those various sectors could be different. Different pay lines and diverse units represent different business conditions, not gender bias.

The current definition of "female job class" as one where 60 per cent or more of the members are females should be revised to 70 per cent, the same as the "male job class" determination. Not only is there a question of the constitutionality of different levels of gender predominance, but in those few public sector jurisdictions where comparable work legislation now exists in North America, a 70 per cent predominance test has been used for both genders. There is no demonstrated need to alter this level. Finally, the Pay Equity Commission or review officer should have no authority to alter the predominance test to be used from the one stated in the act.

A level of "minimum incumbency" of 10 persons in a job class should also be implemented to ensure confidentiality of salaries, minimize the administrative burden on employers and minimize the impact of historical accident on the pay equity plan.

The "job rate" definition should be amended so that rather than meaning the highest rate of compensation for the job class, it should refer to the compensation range available to the job class, reflecting the earning potential for an employee performing at a satisfactory level with sufficient tenure in the position.

"Payroll" should be defined as only wages and salaries payable to the employees covered by the specific plan in question, not the company's province-wide or national payroll.

In regard to section 4: The criteria of skill, effort, responsibility and working conditions in determining value should not be exhaustive. Any factor that is not gender biased should be allowed in the determination.

In regard to subsection 5(1): Recognizing the need for flexibility in implementing a pay equity plan, employers need some direction as to what is meant by "equal or comparable value" and to the allowable limits intended by comparable value. This is a key term in the legislation and in the development of any plan and should be explicitly included in the definition section of the act.

In regard to subsection 5(5), dealing with comparisons throughout the establishment: We believe this should be deleted. Comparisons between bargaining units or between union and nonunion employees should not be allowed. Differences in compensation between units reflect historical priorities and bargaining strength, and comparisons would go far beyond the stated purpose of eliminating gender-biased pay discrimination. Comparisons between bargaining units could place the employer in an untenable situation as the employer must negotiate, in a very short time frame, acceptable plans for units which may have very different priorities.

In regard to section 7: We support the exclusions of factors like seniority and merit for determining allowable differences in compensation, but we believe that any factor that is nongender-biased should be an allowable exclusion.

Subsection 7(2) allows for compensation differences resulting from differences in bargaining strength after a pay equity plan is fully implemented. We recommend that this exclusion be allowed before pay equity is implemented if our request to eliminate comparisons between bargaining units or union and nonunion employees is not implemented.

Clause 7(1)(e) pertains to skills shortages that cause a temporary inflation in compensation. As many skills shortages are persistent, we have consistently had severe difficulties recruiting skilled tradespeople for our Ontario plants. The reference to "temporary" should be deleted from the legislation.

To turn now to implementation, the phase-in period for implementation is a positive aspect of this legislation and probably represents the minimum requirement needed by employers to comply with the legislation, given the amount of development and negotiation necessary. The process allows for potential challenges to the plan at many stages, and this is not only potentially costly but also time-consuming.

A study of small business conducted for the government last year indicates that 87 per cent of small businesses have no personnel officer and only 6.5 per cent have any formal job evaluation system in place. This alone indicates the need for the phase-in period.

The legislation should define the methods that will be undertaken to ensure that any information obtained pursuant to the act will be kept confidential. The requirement to release levels of compensation for job classes causes concern as this information has always been regarded as highly confidential.

The one per cent annual wage adjustment provision of section 12 should specify that included in this amount are payments that may result directly and indirectly as a result of implementing a pay equity plan. In order to maintain internal equity, some gender neutral job classes may receive compensation adjustments, and the cost of these should be included in the one per cent of payroll. As well, the cost of implementation and maintenance of pay equity plans within the organization should be allowed under the one per cent cap.

Section 14 outlines the time frame for periods of review by employees. A more equitable distribution of the review period is required. Employees are given 90 days to comment and the employer is given only seven days to incorporate changes as a result of employees' comments. This is an unrealistic time frame.



On the subject of administration, this legislation would establish a Pay Equity Commission of Ontario, and we recommend that no new bureaucracy be created to deal with this legislation. At a time when governments should be making every effort to control spending, reduce the deficit and reduce the regulatory burden on industry to enhance the competitive position of this province and its industry, the establishment of a new regulatory body would be inconsistent with its goals, and unnecessary.

The Pay Equity Commission should be incorporated as part of the employment standards branch within the Ministry of Labour, and the enforcement of this act should fall under its purview. The employment standards branch offers the most expertise in dealing with employment law in Ontario and is familiar with the enforcement of the current legislation on equal pay for equal work. The opportunity to enhance enforcement of the current equal pay laws might well have the effect of reducing a portion of the wage gap in Ontario without the need for this additional legislation.

As this submission has outlined, General Motors of Canada has some very real concerns about equal pay for work of equal value legislation for the broader public and private sector as proposed by Bill 154. We believe the primary cause of the wage gap lies in legitimate, quantifiable factors such as seniority, hours of work, years of continuous service and so forth, or occupational segregation and inequality of employment opportunities for women, and is not primarily a result of systemic discrimination in compensation.

At a time when Ontario industry is facing severe, global, competitive pressures, the economic impact of implementing pay equity plans, wage adjustments and the cost to defend challenges under the system with resulting cost spirals will have a negative effect on our economy and on job creation which is a priority for this government.

The fact that the government has not implemented pay equity itself and the lack of substantiated cost data for the proposed legislation concerns us. The subjectivity of gender neutral comparison systems and the arbitrary nature of the legislation as well as the potential disruption of the collective bargaining system are reasons we feel the standing committee on administration of justice should take a hard look at this legislation. We do not feel that the objective of closing the wage gap will be accomplished by this form of intrusive legislation.

I believe we have already left with you a submission on philosophical aspects of equal pay for work of equal value legislation and our specific suggestions with respect to amending Bill 154. We appreciate the opportunity to meet with you and are happy to answer any questions you have at this time.

1700

Ms. Gigantes: Thank you for your presentation. It certainly gives us a lot to chew on. Have you looked at recent wage level comparisons internationally?

Mr. Curd: Yes.

Ms. Gigantes: Where does Japan rank these days?

Mr. Curd: With the current yen value?

Ms. Gigantes: On a dollar comparable basis.



Mr. Curd: They are getting a lot closer to Canada.

Ms. Gigantes: They are over us. They are over the United States. I have no doubt that there are different conditions that operate. One of them, certainly according to information I recollect reading recently, is that Japanese women are among the most discriminated against, in terms of overall wage equity, of any group of women in any of the industrialized countries. But certainly in terms of the average wage rate in Japan, they are ahead of us and have got a good way ahead of us at this stage.

I am interested in the approach you have taken because essentially what you have done is told us how well you have moved along the road on your own initiative in terms of employment equity policies and in terms of job comparisons too. You cite the case of the executive secretary position that is compared to an engineering position and so on. At the same time, you are telling us, "We are doing it, but do not tell us to do it." I do not understand that. You have done the work. What is left to do? You are telling us you have done the work and I have no reason to doubt that is the truth.

Mr. Curd: As I understand what you are proposing--

Ms. Gigantes: It ain't my bill.

Mr. Curd: That was a general view. As I understand what is proposed, it requires us to go in and use a defined approach to doing job evaluation. We have our own approach that we have used and developed over the years.

Ms. Gigantes: Yes, I tend to agree with you on that. I certainly do not like the mechanisms set out in this bill and would like to see them more flexible. You have obviously been able to adopt rather flexible procedures if you are into comparing executive secretaries with engineers.

This generates another kind of question in my mind. You have been very strong on the whole question of cross-collective-bargaining-unit comparisons, but in effect you have been doing that. In most manufacturing firms we would find different bargaining units, if the females were represented at all, for the office workers and the production line workers. In fact, you have been comparing across those functional--they are called "functional," it appears--lines.

Mr. Curd: I do not understand your question.

Ms. Gigantes: Why are you having such difficulty with cross-bargaining-unit comparisons when in fact you have been doing them in your work situation? It may be one local that represents both your office workers and your production line workers. No? Two?

Mr. Curd: Our office workers are not represented.

Ms. Gigantes: They are not, but you have still done a comparison.

Ms. Pratt: No, our engineers are not represented either.

Ms. Gigantes: In most firms, somebody who is involved in engineering work would be either inside or outside a bargaining unit and there would be a functional division that might or might not be represented by the existence of another bargaining unit for office workers.

Mr. Curd: Let me just step back from the question as you are putting

it and maybe look at it from my perspective. There has certainly been a translation of the economic settlements that we have made with the unions to the rest of our work force. It has not been precise. In many instances there have been advantages one way or another.

The point we are making is that the bargaining relationship between General Motors and the Canadian Auto Workers goes back 50 years and there are certain relationships that have been established. In looking at them today, it is hard to understand exactly how they got where they are, yet if you analyse them carefully, there are reasons for them. I cannot set those in front of you at this moment. I do not have that in my pocket. I could not begin to recreate all the bargaining history that has taken place over 50 years, including certain pressure situations. We would not try for a moment to evade the fact that there has been pressure brought to bear on certain categories of employees. For example, the skilled trades are an entity that has pushed for its own particular treatment under certain bargaining conditions. It is for those kinds of reasons we do not think they should be compared.

Ms. Wakefield: Ultimately, when we look at female-dominated jobs by any measure, whether we use a 50-hour, 60-hour or 70-hour rule, and we look broadly at the pay rates they earn compared with male jobs in the same group, the pay rates are no different, yet there has been no direct job evaluation scheme of the type Bill 154 proposes. Likewise, we have never done the types of comparisons between our salaried employees--our office employees as you put it although it is broader than that--and the hourly, represented employees. Nevertheless, as Rick says, we believe compensation is fair on both sides of the house.

Ms. Gigantes: What you would like is the flexibility to negotiate a plan with your hourly rate employees. Would that be fair?

Mr. Curd: We have already negotiated.

Ms. Gigantes: Then there might be easy agreement with the CAW about that.

Mr. Curd: No, what we are saying is that we already have an agreement with the CAW about the relationship of the work, pay-wise, among the 45,000 employees it represents within our plants.

Ms. Wakefield: Therefore, it would be redundant to go ahead and try to impose or negotiate a plan on top of a negotiated relationship that we have long since negotiated with them. A new requirement is an onerous, unnecessary cost to us, which we believe would add no value.

Ms. Gigantes: I am going to leave that for the moment because I thought you were doing other things than it appears you are doing.

Mr. Chairman: I have given you a fair amount of time and I want to turn to some of the other members. Mr. Lupusella has a question and maybe in fairness I should share the time a little.

Ms. Gigantes: I am willing to re-enter the discussion later.

Mr. Lupusella: I am going to be extremely brief. I appreciate the content of your brief. I understand what you are talking about in relation to the production that is taking place in your firm, but I notice that in some way you are reluctant to accept the principle of the bill, based on the fact



maybe there may be collusion between the union, when it has to bargain, and the evaluation plan on pay equity, which your firm has already implemented for so many years. Am I correct?

Mr. Curd: It is really difficult to advance your position in an area like this without appearing defensive and as if you do not support the idea of equal pay for essentially equal work. That concept is one we do endorse and we believe we are essentially there. What we do not like is the idea that we need to go and prove it all over again. I do not know how much experience the members of this panel have with consultants. We have too much. They are very expensive. We are not manned or geared up to go through this whole process from ground zero again. We believe we have done it consistently and fairly on an ongoing basis, so one of the things we are most opposed to is the idea that we have to prove all over again that we have done what we have done.

1710

Mr. Lupusella: I appreciate your answer. In view of the fact that the government did not implement pay equity in the public sector, will you please comment on the principle that the government is considering, on the basis of the needs and concerns of a big company such as yours, implementing the principle of flexibility and trying to bring the whole issue again to the public and industry, to find out which way a workable solution can be implemented on this bill? What is your position on that? Do you think that without gathering more information and giving more time to the industries to formulate the right approach to implement this principle of the law, the government is really rash in this legislation?

Ms. Wakefield: Yes, on two grounds, for two reasons. Has enough research been undertaken? No, we do not believe it is fully understood. I have yet to see a study--one released publicly anyway--that seriously looks at the economic impacts and does a real analysis of the potential cost to business, to our macroeconomy in Ontario and to the Canadian economy, that looks at our competitiveness on a global basis.

I am sure you have all heard that the auto industry is the engine of the Ontario economy and that one in seven jobs in this province is tied to us. We are very concerned that we do not fully appreciate the potential impact of this type of legislation. We are concerned as well that the bill is being rushed through without proper consultation. Further, we are concerned that we will be required to comply in a very short time frame. You will notice that one of the things we suggest in our submission is that the government move ahead first. If you are going to undertake a proactive model unlike anything we have seen, then perhaps you should try it on yourselves first, if you will, and fully understand what it is you are trying to do, where the pitfalls are and where the costs are, before you start spinning that out to the private sector, before you do serious, irreparable damage to our economy.

Mr. Lupusella: Do you think a pilot project on the bill, a model, should be implemented by the government in co-operation with industry and the other experts in the field to really understand the impact of this law?

Mr. Curd: That is what we are suggesting. If you really believe it is necessary, that is the way to go. We base that on our own experience. In General Motors, we do not make huge sweeping changes across our corporation in one fell swoop. Last year, we changed from paying our employees a cost-of-living allowance based on an index to a 100 per cent performance pay kind of scheme. We did not implement it across the corporation before we knew



what it meant. We tried it in several plants and locations so that we could understand what it meant. After we tried it, we made some adjustments and went with it across the board. We do that in terms of products, processes, personnel policies and practices, all things of that nature.

Mr. Stevenson: Do you have any plants in some of the jurisdictions in which pay equity legislation has already been brought into effect in one form or another? For example, has GM in the United States looked at the costs of extending those plans into your plants? Are there numbers or data available that would give you some indication of what this means in Ontario?

Mr. Curd: To the best of my knowledge we have no plants that have been impacted by this kind of legislation.

Mr. Stevenson: Has GM tried to analyse this situation at all? Are you aware of any work you may have done on an international basis to deal with the situation?

Mr. Curd: Long before this legislation came along, when we were looking at the question of equal pay for equal work, we looked at our classifications and our various relationships between our jobs and put them in what we thought was the appropriate order. Is that your question?

Mr. Stevenson: No, not really. What about in Australia? They have a form of legislation there that I have not checked into at all.

Mr. Curd: Neither have I.

Ms. Wakefield: If I can maybe interject here, I think the oft-touted Australian example is a bit of a red herring. It is a nationwide pay-setting process that bears little resemblance to what we see in Bill 154 or what is discussed here. It was put in place simply because they did not have equal pay for equal work, something we find repugnant. The method they chose to address the problem was to set pay scales on a national basis, which is certainly not what is being considered here, and we would be horrified if that were to be suggested for Ontario.

Mr. Stevenson: Are you prepared to give us any indication of how many dollars per car are involved in making decisions on shifting production from one plant to another and one jurisdiction to another and that sort of thing?

Mr. Curd: Not out of my vest pocket. I guess you would have to ask me a specific question. If it was important, I could try to get you an answer.

Mr. Stevenson: Certainly economics will play a major part in determining what plants are producing what and what labour force is being used and so on.

Mr. Curd: No doubt about that.

Mr. Stevenson: Is a \$2 increase in the production of a car--I suppose you are not going to give me that information even if you have it, so I might as well withdraw the question.

Miss Christie: I think the other point too is that it is not just our cost. It will also be costs that could be passed on from our suppliers as they have to implement this type of legislation. If they have increased costs,

those will be passed along to us as well. It is not just an implementation of a plan for us. We have to look at it as it goes through the economy and pick up their costs as well because ultimately, that becomes part of the cost of production.

Ms. Wakefield: It is no mere catchphrase that when we wrench a penny out of the cost per car by some new technology or whatever, we really do consider that we have won some success. That is how narrowly we work on the margins. To the consumer, \$2 a car is really "So what?" But in the competitive fight that we really find ourselves in--and again, this is not mere posturing--that \$2 is critical. Any cost is critical to us; any cost that does not have a demonstrated value. That cost of \$2 a car relates to the implementation costs, not pay adjustment costs or anything like that, so it is a substantial amount to us.

Mr. Stevenson: Would you be suggesting that because it could involve your operation and those of your suppliers that, as you have greater Ontario content, there is a possibility that it puts you in an even greater competitive risk, as opposed particularly, say, to offshore.

1720

Ms. Wakefield: That, I would think, would be very true.

Mr. Curd: There is no question about that.

Ms. Wakefield: I believe the ARA Consultants report that was released last week showed that only 10 per cent of the transportation equipment sector have factor-comparison job evaluation systems.

If Bill 154 progresses more or less as it is, these companies, most of whom are our suppliers--in the cars that we sell in Canada, we are over 100 per cent Canadian value added. That is how much we buy, primarily in Ontario. Almost all those companies, 90 per cent, will have to go out and buy themselves one of those job evaluation schemes or somehow implement it, with additional costs.

That has to spill down, and because we are, as I say, over 100 per cent CVA, compared to some of our competitors, for example, now locating in Ontario, which are talking in the 20 to 30 per cent Canadian-value-added range, it is obviously going to adversely impact us in comparison. That is not even considering the people offshore whose pay practices are so radically different and probably unacceptable to us in terms of levels and types of compensation.

Mr. Chairman: On a related question, of the Big Three, does GM not have the largest percentage of its parts supplied internally by your own operation?

Mr. Curd: Yes, we do.

Mr. Chairman: I am trying to calculate in my own mind whether that would place you at a disadvantage relative to Ford and Chrysler. You have probably heard of those names. They are also in the business.

If they are supplied by outside sources, when you get into the cross-bargaining question, and I do not know whether the parliamentary assistant might be able to offer some comment on this or not, but I wonder if

it would impact on you in a different way, because they are not arm's-length plants that are supplying you, obviously, they are GM controlled, where the others have fewer and are buying from independents to a larger extent for their total content. Is that essentially correct?

Ms. Wakefield: Factor in that while we buy more from allied divisions in comparison, we also have higher Canadian-value-added levels. We are also buying more in Ontario than some of our competitors as well. If you are doing that kind of comparison, consider that factor as well.

Mr. Curd: Depending on whether the cost would be greater to us or to our suppliers, then it would make a difference in terms of our competitive position versus Ford or Chrysler.

Mr. Chairman: Let me raise the question, if I could for a moment. Ms. Gigantes wants to get back on, I know, but I want to get this clear in my mind. If GM has an affiliate--this would be a supplier that is owned by GM whereby you supply a number of plants. You have those kinds of operations.

Ms. Wakefield: Our engine plant in St. Catharines might be a good example, or our fabrication plant in Oshawa.

Mr. Chairman: The engine plant in St. Catharines would ship ostensibly all over North America, would it?

Ms. Wakefield: Yes.

Mr. Chairman: For comparison purposes, you could take a division of GM Oshawa and compare it with GM St. Catharines, could you not?

Mr. Ward: I do not think so.

Ms. Wakefield: No.

Interjection.

Mr. Chairman: That is the point that was raised by earlier groups. We are into a little internal discussion here, but it is the geographic displacement. There is some question of whether or not the bill is precise enough in its language. If I can get the assurance of the parliamentary assistant that you cannot compare GM Oshawa with GM St. Catharines, then that simplifies your problem a little bit. I am not certain if that is the case, unless you tell me it is.

Mr. Ward: The answer is either/or.

Ms. Wakefield: It is a minor factor.

Mr. Chairman: That is very clear.

Mr. Ward: Seriously, you do not have to, but they can be combined.

Mr. Chairman: Let us take a real-world situation.

Mr. Ward: Under section 13(3)(a), "the establishment of the employer" can include "two or more geographic divisions," but it is not mandatory.



Mr. Chairman: If I was sitting in General Motors' position right now, I would want to know in somewhat more precise terms what geographic means. Does it mean the province, the country, within five of the municipalities?

Mr. Ward: Regional municipalities.

Ms. Gigantes: In talking to their union, it is doing a contract for its whole unionized work force right across Ontario.

Mr. Curd: A point we tried to make, but we may not have done it successfully, is that in a place like St. Catharines, you have not only an engine plant, but also a foundry and an axle plant. In our view, those are very difficult comparisons to make, to look at a job from the foundry to the engine plant.

Ms. Wakefield: They are competing in different industries for different sales.

Mr. Curd: That is another good point.

Ms. Wakefield: Because we have national pay-setting practices on the hourly side, it is not that major a factor to us. One of the things we do have to consider in terms of geographic distinction is that a large proportion of the output from our Windsor transmission and trim plants, our St. Catharines foundry, axle and engine plants and our Oshawa fabrication and battery plants--from all the component plants we have in Ontario--is sold to the United States.

When you start talking about parts, the competitive margin on those is much narrower than even on a car, for example. Again, I would be concerned that if you start increasing the costs of those components, even by a tiny bit, there is the potential for lost cross-border sales to other assembly plants in the United States.

Ms. Fish: I would like to ask a supplementary on the question of the promotion of the three plants in St. Catharines and the example that you gave. Are those workers represented by the same union?

Mr. Curd: Yes.

Ms. Fish: Are they within a single contract?

Mr. Curd: All our workers across Canada are under the same economic contract.

Ms. Fish: By virtue of having taken what you argue to be very different jobs and distinct and different businesses and having already dealt with them in your economic contracts with a single unit under a single contract, have you not effectively taken your examinations across the lines you are now saying you cannot take under a pay plan?

Mr. Curd: We did not say that we could not take them. What we talked about here was starting over again and making the massive effort of trying to compare these entirely different jobs and looking at them from scratch when we have a bargaining history of 50 years in the plant.

The example I gave of material handling could not be more real than in

the foundry, where we paid additional money for lifting heavy iron eight hours a day. The people no longer lift that heavy iron, but they still get the premium pay they got years ago.

If you were to start today and compare an assembler in the engine plant and say, "How come the assembler in the engine plant gets 15 cents an hour less?" you would have a hard time on skill, effort, responsibility and so forth, explaining that 15 cents; but the bargaining history supports it.

Ms. Gigantes: We are not calling upon you to compare all your jobs.

Mr. Curd: I understand.

Ms. Fish: Do you mind if I just follow it briefly, Ms. Gigantes?

Ms. Gigantes: No.

Ms. Fish: A couple of questions flow out of that. In the example you have given of the differential of 15 cents an hour or thereabouts, do you find your workers transferring for 15 cents an hour?

Mr. Curd: No.

Ms. Fish: That does not seem to be a major reason that would move a worker from one part to another.

Mr. Curd: No.

Ms. Fish: The last question I would ask really comes back to something Ms. Gigantes started on, which is that I now think I hear you saying that the bargaining history is what you would principally point to, but I thought I heard you say earlier in your presentation that the bargaining history reflected a nongender-based, nongender-biased wage and benefit package across all your workers. I wondered if I was correct in what I was hearing. Is it your view that where you are now in your agreement, whether it be as a consequence of bargaining history or the consequence of some other specific initiative you have taken, you now have a nongender-based wage compensation system?

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Mr. Curd: Absolutely.

Ms. Fish: I will go back and try to reread it with some detail and hope that you will be available to answer a question as a follow-up. Unless you have something further to add to assist me, if you have a single union with a single, economic contract and contend--

Ms. Gigantes: It does not cover all the workers.

Miss Christie: It covers only the represented workers. We have nonrepresented employees as well.

Ms. Fish: I appreciate that, but just to take the case within the represented workers--because that was the illustration taken in the St. Catharines plant that dealt with represented workers, Ms. Gigantes--if you had that and if you contend that, even within that frame there is no gender-based discrimination in the wage and compensation package, I am very hard pressed to



understand the problem you are advancing with an analysis on pay equity. I cannot quite find where you come up with an argument that suggests that you would be virtually shutting down as a consequence of the bill being adopted.

Mr. Curd: Our argument is not that we would be shutting down. We tried to impress upon you here in this room that we are faced with intense competitive pressure. We do not want to add pennies to our cost unless it really does some good. As we understand what is proposed at present, it calls for what we believe to be an expensive re-evaluation of where we are today. We see no reason to do that. If, in the interest of the public of Ontario, you feel that you need to pass this kind of legislation, then at the very least it should be a complaint-based process.

Ms. Fish: I do not want to argue with the deputant. On the issue of adding pennies, you have indicated that you have a 15-cent-per-hour differential between two groups of workers in one geographic area. That pennies' difference an hour to small plants relatively speaking to your full operation, results from a bargaining history and a particular reason that is no longer extant.

The question that is left in my mind is, if pennies are as important as you have said at the margin, how do you then sit with that kind of differential built in? On the one hand, you are arguing pennies at the margin; on the other hand, you are giving me an example of differentials that flow from previous bargaining and previous work in job descriptions. I realize there may be a differential weight. I simply come back to saying I am having difficulty understanding why you feel you would be paying a negative penalty if, indeed, you believe that your wage and compensation practices now are nongender based.

Ms. Caplan: I have a supplementary to that and it is a comment because it relates directly to what Ms. Fish has said. We believe that there are many employers who call themselves equal opportunity employers who have initiated employment equity plans and who have the kind of paying compensation system that, in fact, would satisfy this legislation today. We know many who do not. What you have presented to us is that GM would likely be one of those that would, especially given its bargaining history. If you and your bargaining group agreed that you had, and that was presented to the Pay Equity Commission of Ontario, I do not see that you would have the kind of costs or problems that you envisage.

It seems to me that those sophisticated employers that have made the progress you have stated GM has made have shown leadership and will be examples to other employers to help them implement this legislation. This comment is really in the way of being congratulatory. From what I have heard, it seems to me you will have nothing to fear from this legislation.

Ms. Wakefield: We appreciate your congratulations. It is rare that we get kudos, particularly from legislators. For example, we do not have on our salaried side a factor point comparison system based on skill, effort, responsibility and working conditions that justifies every last job or, for that matter, every last female-dominated job. We believe we have a fair set of pay scales. As I read it, Bill 154 currently requires such a job evaluation scheme and we see costs in implementing that.

Ms. Caplan: We have heard, for example, from the Federation of Women's Teachers Associations of Ontario. They are requesting a change in some of the definitions of skills and so forth to reflect that kind of flexibility,



so that schemes for paying compensation that are not gender-based, but are not quite as tied to--we were really talking semantics. They were talking about qualifications instead of skill, that type of thing.

Ms. Gigantes: That was the Ontario Public School Trustees' Association.

Ms. Caplan: I am sorry, the school trustees. Do you think that would satisfy your concerns? Is it a definitional concern as opposed to the requirement to go all the way back and start in at square one?

Ms. Wakefield: One of our prime concerns has to be the cost of doing anything to prove up front that we pay equitably, using some system.

Ms. Caplan: Even though you are already doing it?

Ms. Wakefield: Even though we are doing it. We are saying that there is a cost associated with this that we do not think is necessary or desirable to shoulder because it does not add value. For an employer that does pay fairly, what is the point of spending the money to prove it does? It does not give any added value.

Ms. Caplan: As a last example, when we had one of the consultants you refer to here, one who had worked on the city of Toronto plan, it was suggested that Toronto would post a sign on the bulletin board that said it had already done this. It seems to me that you will be in a somewhat similar situation.

Ms. Wakefield: One hopes the Pay Equity Commission thinks as you do.

Mr. Stevenson: If everything you say is right, if everything is in order and there are no subsequent bargaining problems, basically you are saying it is going to cost you \$1 million to put what you think you have on paper so that it will be acceptable to this bill.

Mr. Curd: I think that grossly understates the actual cost; that is the best-case scenario. I am reluctant to put out higher figures that I cannot somehow or other put on paper, but my intuition is it would be substantially more.

Ms. Gigantes: What is your advertising budget in Ontario?

Mr. Curd: I am a personnel guy, not a marketing guy.

Ms. Gigantes: That \$1 million invested might be a good advertising feature; even if it were \$2 million, it might be a good investment. There are women, especially if they get equal pay, who are increasingly going out and buying themselves cars these days. Volvo knows that. Do you remember that Volvo ad?

Ms. Wakefield: We have a study on market segmentation and the factors that lead people to make purchase decisions that we should make available to you.

Ms. Gigantes: I would love to see it. We try to sell ourselves. We are always looking for good story lines around here.

Could I ask you about two items you mention on page 5. One is the

ranking one. We have had this ranking comparison, comparison of comparisons, cited to us a couple of times before and I am always kind of puzzled about why it has been advanced as a notion that there is something terribly wrong with the idea of an employer trying to assign some kind of work to the jobs done in the employer's firm. Surely if you are going to look at one state and how it values services, that is one employer. You look at another state and how that employer values services. Would you not expect to find a difference between employer A and employer B anywhere?

You do not want to go to the Australian system where you have one rate for nurses right across the province--although we do practically--or one rate for executive secretaries. We do not expect that to happen under equal pay legislation where we say to an employer, "However you pay people, pay them without sex discrimination." I am not surprised when one state will decide that nurses are more important in that state and another state will decide that nurses are a little less important compared to somebody else. They may have different priorities in these things.

Mr. Curd: Might not one employer put the value of an assembler versus an electrician at a different level?

Ms. Gigantes: Yes.

Mr. Curd: Or the same employer, in a complex with 18,000 people--it might be different from one end to the other, especially in a substantially different kind of business competing in a substantially different market.

Ms. Wakefield: Even though an assembler may be more important to one superintendent, for example, because he deals chiefly with assemblers and not electricians, the fact remains that we have thousands of applications on file for assemblers; we can get them. We cannot get electricians at virtually any price and we have to pay a premium for them. That remains the fundamental problem when you rely exclusively on so-called value-subjective evaluation schemes, however you want to define it, to provide the price for your equation.

Ms. Gigantes: That gets us into a whole other question, an interesting question too, which is why industries such as yours, over years, will allow themselves to be deprived of certain skills and be forced to overpay for those skills, in your view, rather than making sure you have a supply. It is not impossible to train electricians. I have never understood that, but let us leave it aside.

Ms. Wakefield: I can get you the number of apprentices that we currently have.

Miss Christie: I think in Ontario we have either the first- or second-largest number of apprentices in our skilled-trades program.

Ms. Pratt: We have approximately 4,500 presently enrolled.

Ms. Gigantes: Let us leave aside that question because it does get us into a whole other problem in terms of how we look at the labour market. In terms of the corporation, what you do with union negotiating, if I understand it correctly, is determine for those areas of your firms for which you have collective agreements one kind of standard framework settled in negotiations, and so you set a cross-function comparison for certain workers, if you want to



call it that, and say you are going to pay at the same kind of level. I do not see that as a big problem in terms of what you have already done.

To move to another thing on page 5, do you remember the name of the survey you referred to where you say that 40 per cent of the firms responding in the survey done by consultants for the Ontario government indicated they use market data in determining wages?

Miss Christie: I am sorry, I do not know the name of it. It was from the studies that were released. We can get back to you on that.

Ms. Gigantes: The studies I have looked at have all been for firms of under 100 employees.

Miss Christie: They could well have been small. I will have to get back to you.

Ms. Gigantes: The two I have handy with me contradict directly what you are saying. I will refer you to the Hay Management Consultants' survey, page 2, in which they indicate that only 14 per cent of those responding indicated that they used market information for determining wages, and also a similar kind of finding by Urban Dimensions Inc. that was done for the Ministry of Industry, Trade and Technology. That survey indicated that labour market information at the maximum in the various sizes of firms they surveyed--there are only 83 in this response--constituted an indication of 28 per cent.

I was quite surprised by that one too. It is on page 50 of that study. It indicated that the larger the firm the more the question of merit evaluation by management seemed to be taken as the major influence on employee pay levels. I found that strange because one thinks of merit as being assessed on a very individual basis. In fact, the larger the firm, the more they said merit was the factor that determined the pay level.

Mr. Curd: There are several elements that you are rolling into one. In determining the range, the low and the high of a salary for a particular category of workers, let us say executive secretaries, we absolutely use comparative data. We look at the market. In determining an individual's position within the range, merit is absolutely the key factor.

Ms. Gigantes: If you could find the study to which you made reference, I would like to have a look at it because it does seem to be in contradiction to the two I happen to have with me right here.

Mr. Chairman: I appreciate the patience of the delegation. We went substantially over time. I guess that is be an indication of the interest we have in your submission. The time that you put into the preparation and delivery of your submission to us is much appreciated. We may have to get back to you for further information. We thank you for your time and for being here with us this evening.

Mr. Curd: Thank you for your attentiveness. We will be glad to spend any time with you, answering any questions.

Mr. Chairman: To give you some indication of time frame, we will have the balance of this week and a couple of days next week where we have further hearings and receive representations from various groups. Following that, there will be a couple of weeks break and then we will go into



clause-by-clause on the detail of the bill. There will be some time remaining before we actually get into the technicalities of amendments and changes that may be proposed, and what is finally recommended to the legislature.

Ms. Gigantes: Before we close, perhaps I can indicate that I would like to take with members of the committee information I requested concerning of D. H. Services, Cara Operations, and Canteen of Canada, each of which was involved with, I think it was, the submission of Concerned Group of Ontario Service Businesses the other day.

The committee adjourned at 5:48.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

THURSDAY, MARCH 5, 1987

Morning Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Fish, S. A. (St. George PC)

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Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

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Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Dean, G. H. (Wentworth PC) for Mr. Rowe

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Canadian Union of Public Employees, Ontario Division:

O'Connor, T., Secretary-Treasurer

Primeau, L., Chairperson, Women's Committee

Darcy, J., Executive Board Member

Genge, S., Member, Women's Committee

Harris, I., Equal Opportunities and Pay Equity Representative

Turner, L., Executive Board Member

From the Board of Trade of Metropolitan Toronto:

Campbell, G. I., Vice-Chairman, Labour Relations Committee

Baker, J. A., Member, Labour Relations Committee



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, March 5, 1987

The committee met at 10:12 a.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: I apologize that we are starting a couple of minutes late. However, I want to assure you that the chairman was working on pay equity, but in another forum. We were a little delayed, and I do apologize for that.

I would like to welcome the Canadian Union of Public Employees, Ontario division, to our discussions. We are looking forward to your comments and input on Bill 154. We will be hearing further delegations for the balance of this week, as well as for at least a couple of days next week. As you are probably aware, once we have completed all that, we will be going into clause-by-clause discussions a couple of weeks later. Your input is very important to us, and we thank you for coming before us. At this time, if you would take a moment to introduce your delegation to us, we can get under way with your input into this very important subject.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

Mr. T. O'Connor: Thank you very much for the opportunity to be here. I have listed the names of our delegation on page 34 of our submission. I will identify them for you. I am Terry O'Connor, secretary-treasurer of the Ontario division. Seated next to me is Louise Primeau, chairperson of our Ontario division women's committee. Next to her is Judy Darcy, an executive board member of our Ontario division. Seated next to her is Sue Genge, a representative from our Ontario division women's committee. Irene Harris is a staff person with specific responsibilities for equal opportunity and pay equity. Next to her is Linda Turner, an Ontario division executive board member and a member of our Ontario division women's committee.

We propose to go through our brief, not reading it in its entirety, but highlighting certain concerns and letting you know what is in there. We hope you will read the entire thing afterwards. We want to allow some time for you to ask questions of clarification and so on. Without any more ado, I will turn it over to Louise Primeau, who will begin our presentation.

Miss Primeau: On behalf of the Canadian Union of Public Employees, Ontario division, we are pleased to have the opportunity to meet with your committee today to present our response to Bill 154.

The Canadian Union of Public Employees represents approximately 120,000 members in Ontario, who are in 600 local unions. Our members are employed by municipalities, boards of education, hospitals, universities, nursing homes, homes for the aged, health units, electrical utilities, voluntary social

agencies, welfare agencies, libraries, the Canadian Broadcasting Corp., the Ontario Housing Corp. and the Workers' Compensation Board.

Our Ontario division has a mandated responsibility to respond to legislation. In our presentation today, we will express the concerns about Bill 154 for all our locals. There are many CUPE local unions which would have appeared before you to give you more details on the impact this legislation would have in their particular work places. However, since in the interest of time the committee is able to hear from parent bodies only, such locals will not be making formal presentations. We urge you to consider those written submissions in conjunction with our presentation today.

CUPE has a strong tradition and history of trying to achieve equal pay for work of equal value for our members. Since 1971, all of our local unions have been urged to negotiate equal pay provisions in their collective agreements. In 1981, CUPE locals at our national convention decided to make a common base entry rate a priority in collective agreements as a way at least to start women off on an equal footing with male workers, who usually have a higher starting rate.

Since that time, many locals have developed a variety of ways to negotiate equal pay provisions. It is our strong belief that this issue is receiving higher priority at the bargaining table on the part of our locals, but that employers strongly resist such provisions. As an example, we cite the recent decision of arbitrator Kevin Burkett in the contract dispute between our Ontario Council of Hospital Unions and the Ontario Hospital Association.

The Ontario Council of Hospital Unions argued that the entry level for men in the hospital sector was the cleaner position, which was paying approximately \$10 per hour. Our council argued that any classification receiving less than \$10 per hour should be brought up to the male cleaner rate of \$10 per hour prior to the application of any general wage increase. The classifications in the hospital sector that were below \$10 per hour were predominantly, if not exclusively, female-dominated. The Ontario Hospital Association would not agree to this change, which would have gone a long way towards bringing up wages of jobs predominantly held by women.

Other examples of trying to close the wage gap through collective bargaining include Local 994 at the City of York Board of Education, which went on strike to reduce the wage gap between cleaners--mostly women--and caretakers--mostly men. In Renfrew county, Local 1247 took the initiative and drew up real job descriptions based on the actual work that men and women cleaners were doing to prove to management that it was practising discrimination by paying women less. Secretaries at the Bruce County Board of Education, members of Local 2712, embarked on a strike to win pay equity with nonclerical maintenance staff at the board. Support from other trade unionists and high morale during the strike eventually won them more pay.

We raise these points about our historical support for bargaining for equal pay and for support for the need for equal pay for work of equal value legislation to highlight two important points that guide our comments on Bill 154.

First, we need Ontario legislation in a form that will enshrine the principle of equal pay for work of equal value in law through a series of pay equity programs and a complaint-based system. Second, we need legislation which will respect and not hinder the collective bargaining system through which unions and employers must negotiate equal pay provisions.



Such legislation and programs must apply so that all women are treated equally.

Ms. Darcy: I am going to start going through our areas of concern and recommended amendments, but I would like to say first on behalf of CUPE that as a member organization of the Equal Pay Coalition we support the presentation the coalition will be making to you later today. As an affiliated member of the Ontario Federation of Labour, our organization had a major input into the development of the OFL's position on Bill 154 and we fully support its presentation, which was made to you on the first day of the hearings. We will try not to repeat everything that is in it but will highlight the concerns contained in that and in the presentation of the Equal Pay Coalition specifically as they relate to CUPE members in Ontario.

Let me go through our areas of concern and recommended amendments. We urge your committee to put forward major amendments to the bill (1) so that it is equally accessible to all working women; (2) to ensure that the stated objective is equal pay for work of equal value; (3) so that the bill will be implemented in the shortest time possible; and (4) so that the rights and roles of unions are respected in assuring implementation of the legislation.

On the issue of making Bill 154 equally accessible to all working women, we feel very strongly that if all women are not covered, severe loopholes are established by default through the use of such ploys as contracting out, shifting of positions and misuse of exclusions. There are seven major ways in which women are currently excluded from access to Bill 154.

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We feel all private employers should be covered, and they are not now. There is no coverage for all-female work places. There ought to be cross-unit comparisons and provisions for centralized bargaining. The areas of exclusions are something that leaves many women out, as are the definition of establishment, the issue of gender predominance and decisions regarding female job classes and the issue of bargaining strength.

On the question of all employers being covered, we object to the exclusion of employers with fewer than 10 employees and the voluntary option given to employers with fewer than 100 employees to file pay equity plans. In the Ontario Federation of Labour's report on the green paper hearings, two key points were made:

"The government's green paper on pay equity reports that a full 30 per cent of Ontario's working women are in work places of less than 20 employees. Most are not unionized and have few, if any, wage protections and job security. Without laws, this group is the most exploited in terms of remuneration....

"Many submissions, in response to small business concerns about proposed legislation applying to them, pointed out that, although smaller companies have fewer resources to undertake pay equity programs, they also have fewer positions to assess and a smaller wage bill to rectify."

To rectify these inequities inherent in the bill, we urge your committee to amend the bill--and here we have summarized our recommendations on page 9, as we do at the end of each section.



1. Clause 2(1)(b) of Bill 154 should be amended to read, "all employees in the private sector in Ontario," in order to provide coverage for women working in firms employing less than 10 workers.

2. Workers in unorganized work places which employ up to 99 people must be guaranteed access to a complaint-based system.

3. In all unionized work places, it must be mandatory for employers to negotiate pay equity provisions with the union or unions.

Next, on the issue of all-female work places, Bill 154 is set up so that comparisons between male- and female-predominated work are required. Consequently, those who work in establishments where there is no male-dominated work cannot benefit from the legislation.

In CUPE, we represent many work places where all our members are female. These include social service agencies, libraries, nursing homes and day care centres.

The severity of this aspect of the legislation was forecast by CUPE Local 2204, the Ottawa-Carleton day care workers, in their submission to the government's consultation panel. In that submission, the government was advised that, although day care workers' qualifications are similar to male-dominated jobs such as building inspectors and zoo-keepers, the pay is substantially lower. Local 2204 reported that, while it had negotiated wage parity with regional counterparts, it succeeded only in comparing jobs with others in the same female wage ghetto and not with other types of workers doing work of equal value.

While we understand that the government has indicated acceptance that this issue is not dealt with under Bill 154 and has promised to have the Pay Equity Commission act quickly on this, we do not feel this issue should remain unlegislated.

We recommend, therefore, that the Pay Equity Commission be given specific powers under the legislation to ensure that women in all-female work places who have no male comparison group or women in work places in which there are too few male comparable job classes to allow for comparisons receive wage adjustments on the same timetable as other workers.

Moving along to the issue of cross-unit comparisons and centralized bargaining, this is another major and specific concern to our union. Many of our local unions use centralized bargaining in their normal course of collective bargaining. Our earlier example of the Ontario Council of Hospital Unions is one such group, as are many local unions negotiating with boards of education and municipalities.

Under Bill 154, the definition of employer as an employer in the broader public sector does not recognize a group of employers, for example, as with the Ontario Hospital Association. Again, we feel it is important to amend Bill 154 so that "related employers" is included in the definition.

Subsection 13(1) of the bill provides for a pay equity plan for each bargaining unit in an establishment. It does not, however, allow for comparisons across bargaining units, which, in our view, is an essential comparison. Many of our bargaining units are gender-predominated. For example, many inside municipal workers are female-dominated, with outside municipal

workers being male-dominated. This is also the case with many boards of education, where caretakers and cleaners are in one unit, while clerical workers are in another unit. In hospitals, clerical workers are usually in separate units from service workers. These categories of occupations are usually male- and female-dominated and should be comparable for pay equity purposes.

We also note here that in many of our local unions part-time workers end up in separate bargaining units. This division is not something that is, in most cases, by our choice. This division of units often results from decisions of the Ontario Labour Relations Board. In order to ensure that appropriate comparisons take place, we feel it is critical that workers in different bargaining units be allowed to make cross-comparisons. We want to see Bill 154 amended to allow comparisons between bargaining units.

I just underline that if there are not amendments made to the bill in that area, I think it is fair to say that the majority of women in CUPE would not be covered by pay equity legislation. Therefore, our recommendations in this area are:

5. That the definition of employer include "related or under common control" as defined by the Labour Relations Act and the Employment Standards Act;

6. Amend both clauses 5(4)(a) and 5(4)(b), the basis of comparison, and subsection 13(1) to call for comparisons across bargaining units.

Ms. Genge: I want to deal with the question of exclusions under Bill 154. CUPE is disappointed with the number of positions that are allowed to be excluded by the bill, especially since the Ontario Federation of Labour, unions and women's organizations made clear to the consultation hearings that these exclusions, except those based on a gender-neutral seniority system, should not be allowed in any legislation. With every exception allowed, thousands of women will be denied access to the legislation.

We have gone through a number of the exclusions in the bill in the next section of our document. I do not want to go into all the areas in detail now, but we hope you will read our commentary on each of those issues: on the question of training positions, merit compensation plans based on performance ratings, red-circling and skills shortages.

I do want to put a bit of emphasis on the question of casuals as an excluded category, however. While we welcome Bill 154's intent to include part-time and seasonal workers in the legislation, we are opposed to the exclusion of casual workers under subsection 7(3). It is our experience that casual workers must perform their assigned duties as well as is expected of full-time or part-time workers carrying out similar work.

As the Ontario Federation of Labour stated to you, casual workers are really part-time workers who work irregular hours. Casuals should not be allowed to be undervalued by being excluded from the legislation. Otherwise, the legislation may end up hurting women if employers decide to use casuals, instead of full-time or part-time workers, to avoid pay equity. Our recommendations are:

7. That Bill 154 should be amended so that the exclusions of temporary employee training or development assignment, merit pay systems, red-circling and skills shortage are eliminated from the bill.



8. Subsections 7(3) and 7(4) of the Bill 154 should be deleted so that casual workers are included in the legislation.

We move on to the definition of "establishment" under the bill. Bill 154 has chosen a geographic definition of "establishment," which CUPE opposed during the consultation hearings. We do not accept that a worker in one part of the province should be legally undervalued, simply because he or she works in a different part of the province.

CUPE would prefer a corporate definition of "establishment." The corporate definition should include "related employers," as used in subsection 1(4) of the Labour Relations Act and subsection 13(1) of the Employment Standards Act. This change would automatically allow comparisons of all employees under one employer. Unions would not have to negotiate this and unorganized workers would be ensured comparison in all parts of their employer's establishment. As well, the definition, with the inclusion of "related employers," would make the legislation applicable to those unions involved in centralized bargaining. Our recommendation is:

9. That the definition of "establishment" be amended to a corporate definition of establishment that includes "related employers," as used in subsection 1(4) of the Labour Relations Act and subsection 13(1) of the Employment Standards Act, and that legislatively mandates the Pay Equity Commission to enable all-female work places and those with too few male class comparables to seek equal pay rates.

The issue of gender predominance and decisions regarding female job classes is also of concern. In Bill 154, the definition of female job class and male job class refers to percentage figures of 60 per cent and 70 per cent respectively. We note and welcome that the second part of each definition allows the employer and union to decide mutually to label a job class male or female. Subsection 1(4) refers to "decisions re: job class" and "such other criteria as may be prescribed by the regulations." It is our position that, as much as possible, employers and unions must have the flexibility to negotiate various aspects of equal pay plans and provisions.

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To ensure the percentage of figures and criteria relating to the decision about percentage figures are not used to subvert inclusion of women in equal pay provisions, we recommend that:

10. Subsection 1(4) be amended to mandate unions and employers to negotiate the criteria for and decisions regarding whether a job class is male or female.

Concerning bargaining strength, subsection 7(2) of Bill 154 would allow any wage gap that has been closed or partially closed to be widened again by an employer arguing that the difference was the result of bargaining strength of the male-dominated group. We do not agree that employers should be able to avoid offering the same increase to female-predominated groups which are of equal value. If the government accepts that we need pay equity to deal with the problem of gender-based wage discrimination, then surely the bargaining strength exclusion, which makes it legal to argue wage discrimination, is a contradiction of the whole process of ensuring women equal pay for work of equal value. We recommend that:

11. Subsection 7(2) be deleted so that the ability to show bargaining



strength as a reason for difference in wages between male and female job classes is not allowed.

Ms. Harris: I would now like to address the issue of funding in this bill, the money part of the bill, and paying women equally. I would like to start with the issue of transfer payments.

We in CUPE believe we cannot morally afford a situation where equal pay legislation merely makes our workers pay the costs either through loss of wages or through an increased regressive property tax bill. Consequently, we urge your committee to consider seriously changes to the money aspect of the bill which ensure that the employers who have been benefiting financially from discriminating pay practices pay the equal pay bill.

As the major union representing public employees, our organization has witnessed the devastating results of provincial cutbacks in funding to municipalities for services. Services affected by these cutbacks include child care, library services, social services, homes for the aged and education. These cutbacks have forced municipalities to eliminate services or to raise property taxes. There has always been strong support from the entire labour movement for preference for the use of progressive income tax, rather than the regressive property tax used by municipalities to fund their portion of municipal services.

When implementing pay equity in the broader public sector, it is critical that the provincial government increase its transfer payments to cover the costs of implementing pay equity. These costs should include administrative expenses that municipalities will incur to implement the legislation in their jurisdictions.

These additional transfer payments must be allocated to a separate pay equity fund designated for implementation of pay equity plans. Without a separate identifiable fund it will be difficult to ensure that pay equity adjustments are not coming from the general wage package and that the fund is appropriately maintained at required percentages of payroll.

The next issue deals with no reduction in wages. We feel it must be clear to employers and workers that this legislation is not taking away wage increases from some to make up the difference to underpaid women. It must be illegal for employers to do this.

The next issue is the definition of when pay equity is actually achieved. The bill's definition should be changed so that it is tied to the closing of any wage gap attributable to systemic wage discrimination. Without this approach, a further number of women will not end up with equal pay, even though they may have been fortunate enough to be in a female job class being compared to a male job class. We say this since the definition in subsection 5(1) assumes that pay equity is achieved when the top rate of pay in a predominantly female job class of jobs is equal to the top rate of the male comparison group. What does this do to women who are not yet at the top rate? This section does not recognize the problem that exists in most female-dominated occupations: that they have many more increment steps and that increment steps are often spread out over long periods of time with no guarantees of reaching the top rate in a specified period. Men tend to be in jobs with fewer increments and they reach the top rate faster. We believe that the criteria for achieving pay equity must deal directly with the issue at hand by closing wage gaps which are attributable to systemic wage discrimination.

Methods of comparison dealt with in subsection 5(2) and subsection 5(3) are unfair in that they require that women at the top rate of pay be paid equally to the top rate of pay in a male group that performs work of lower value but currently is paid more than the female group, and where the female group is comparable to more than one male group, that the comparison be with the group with the lowest job rate where the work is equal or with the highest job rate if the value of the work is lower.

We believe this part of the bill, in effect, makes it legal to pay women less than equal wages once they have been compared. This built-in inequality must be taken out of the legislation.

Therefore, we recommend:

12. That transfer payments to broader public sector employers be increased to cover the costs of pay equity wage adjustments and administrative costs related to the development and implementation of pay equity plans, so these costs come from provincial funds and not from property taxes.

13. That the legislation be amended to provide that employers establish a separate pay equity fund.

14. That the legislation be amended to prohibit employers from reducing or restraining any wages to achieve equal pay for work of equal value.

15. That subsection 5(1) be amended to provide that for the purposes of this act, pay equity is achieved when the wage differential between female and male job classes is reduced by an amount attributable to systemic wage discrimination.

16. That the ways in which comparisons are made in subsection 5(1) be amended so that the pay equity adjustments proportionately adopt the entire incremental pay structure from the comparable male job class.

17. That female job classes be compared with the highest-paid comparable male group.

On the issue of timing of implementation of the legislation, we believe the timing is too long. For consistency and in the interests of equal access to the legislation, we believe all employers, whether private or public sector, should have to post pay equity plans by the first anniversary of the effective date of the legislation and begin pay adjustments by the second anniversary date.

It is important for the public and private sector employers to be on the same timetable if we are to avoid the trap of pay equity legislation being used as a motivation for contracting out of work. One of the reasons our organization has fought against the contracting out of work is the way it is used to move women out of better-paid unionized jobs and into lower-paid nonunionized jobs. Our fear is that many employers may be enticed to contract out jobs to areas in the private sector not yet on the pay equity legislative timetable.

We also object to the limitation of one per cent of payroll being the amount set aside by the employer for pay equity adjustments. Since Bill 154 is limited in access and not meeting the equal pay for work of equal value standard, the least that is expected is that the bill would complete its process in a specified time. Women who have been undervalued and underpaid



should not have to wait for years to achieve equal pay because the legislation limits the percentage of payroll required.

We accept the concept of a phase-in period, but the legislation should be amended so that pay adjustments are completed within a five-year period.

We recommend that the bill be amended:

18. To ensure that pay equity adjustments are completed within five years of the effective date of the legislation.

19. That all employers begin wage adjustments no later than two years from the effective date of the legislation.

20. That pay equity adjustments be made retroactive to the effective date of the legislation.

Continuing, I will go into the role of the union. Ideally, for all unionized work places, any pay equity legislation should direct employers and unions to bargain equal pay for work of equal value. At minimum, it is critical that Bill 154 be consistent with current labour legislation and not override or threaten current protections afforded working women.

Several amendments are needed to Bill 154 to do this. For example, the bill holds unions liable for not negotiating a pay equity plan that complies with the act, but it does not guarantee unions or employees access to the type of information needed to make such negotiations possible. The legislation does not give the union the right to the implementation of pay equity plans, nor access to monitoring information to gauge progress and no paid time off for union members involved in investigating and negotiating the pay equity plan to be used.

On the other hand, Bill 154 has not only the liability section, but also allows the commission to impose outside experts to develop pay equity plans and order the union to pay all costs and individual union officers to be fined \$2,000 and our organization \$25,000. The bill clearly overlooks two basic facts: that it is the employers who have benefited from gender-based wage discrimination, not unions, and that employers have used their upper hand to resist negotiating equal pay for work of equal value.

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Another concern is the bill's requirement that inequitable pay practices be eliminated using job evaluation. While our union has made use of job evaluation in many locals, we have identified other methods towards achieving pay equity. Many of these methods, such as equalizing base entry rates and reducing the number of increment steps, are as effective as approaches taken in Bill 154. We urge your committee to amend the bill so that unions and employers are allowed to negotiate the best methods of achieving equal pay.

It would also be practical for the legislation to allow these negotiations for pay equity to be separate from regular negotiations, if either party so requests. This will be most useful in work places which are in a term of collective agreement and which will not be completed before pay equity is to be negotiated.

In order to ensure that Bill 154 is consistent with the labour legislation and recognizes the role of unions, we recommend that Bill 154 be amended to:



21. Allow unions and employers the right to bargain a range of methods to implement pay equity.

22. Ensure that the legislation is consistent with other labour legislation which mandates unions to bargain in good faith and a duty of fair representation. Other liability sections in the bill should be deleted.

23. Require that bargaining pay equity plans takes place separately and apart from the regular collective bargaining proces if either the union or employer so requests.

24. Ensure that unions and any individuals laying a complaint have access to all the necessary information in carrying out the legislation.

In conclusion to our proposal today, women have waited a long time for legislation which will insist we have equal pay for work of equal value. While we recognize that this will not take place overnight, women at least have the right to expect that Bill 154 will be equally accessible to all women, will close gaps in wages, will be done in a reasonable time frame and will not tie the hands of unions which are currently making headway in the negotiation of equal pay provisions in the collective agreements.

Mr. Chairman: Thank you very much. You have some questions from members of the committee. I would ask members to try to limit their questions so I can share the time equitably. I will be watching the clock, as you probably would expect. I will start with Ms. Gigantes, Mr. Ward and then Mr. Baetz.

Ms. Gigantes: Thank you for the presentation. It is one of the most comprehensive submissions we have had and it gives us a lot to think about. I will touch on a few little points that remain a bit unclear in my mind.

When I look at the pattern of employment of women in the Ontario work force and refer to statistics that the Ontario women's directorate has provided to us, we learn that about a quarter of all women who work in Ontario, over 500,000 of them, work in work places with fewer than 100 people. You suggested to us that where there is a union, there should be equal pay plans for those work places. Would that not leave out an awful lot of the work places where those women work?

Ms. Harris: I think what you are getting at is how do you deal with the fact that in those unorganized places there is not a union. It is hard to develop pay equity plans, because those workers have no one to represent them.

We are saying, at least where there is a union, the legislation should take advantage of that fact and have union employers who know the work place best sit down and negotiate the plan. In recognition of our sisters who are in unorganized work places, we are saying at minimum they should have access to a complaint-based system.

Ms. Gigantes: Even if they are working in a work place with fewer than 10. Obviously, these are not the work situations you are most familiar with, because you are not in those work situations as a union. Do you think it would be a help to these women to have an obligation on the employer to set out a plan, at least giving the positions within the firm and the pay rates? If I work in a firm with 55 people in it, how will I know what the other people earn and what kinds of jobs they are supposed to be doing, according to the employer? How can I base a complaint on a total lack of knowledge, except

perhaps of three colleagues I work with most closely? Do you think it would be helpful to women in that situation?

Ms. Harris: Sure it would be if we could get that, as long as that goes along with the ability then to be able to complain.

Ms. Gigantes: Right; there is no point in having a plan if you cannot complain. On page 27, in recommendation 9, you talked about a new definition, in fact it is an old definition of "establishment," and how we should change the definition of "establishment" that is currently in Bill 154 to reflect the kind of definition we are working with in the Labour Relations Act and the Employment Standards Act. Would that have implications, in your view, for the problem you see about the incentive that exists for employers to contract out?

Ms. Harris: You mean without using the corporate definition on the related employers?

Ms. Gigantes: Yes.

Ms. Harris: Do you want to comment on that?

Ms. Darcy: I do not think there is any question that, for instance, in the situation where I work, which is at the Metro Toronto Library Board, we have three different bargaining units and they are definitely female-predominated. The one for library assistants and clerical workers, of which I am the president, is predominantly female. There are no comparison groups internally. We have a maintenance unit of 13 people, predominantly male. That is a group, at least within the employer, that we would be in a position to make a comparison with if the legislation were changed.

We would argue even further than that, however, that the men who work within female wage ghettos are themselves underpaid as a consequence of working in female wage ghettos and that in our case it would be most useful to be able to compare with people in the corporation of Metro Toronto, which is, in fact, the funding source and to which we are tied for all other purposes. If we do not have a broad definition of "establishment," in our case we first of all have virtually no one to compare to and our possibly first and possibly only comparison group would be a group that is already underpaid.

Ms. Gigantes: My question really focuses on the question of contracting out. There is currently an incentive for an employer to contract out certain positions if he can shift the responsibility for equal pay adjustments to another employer who is a contractor of cleaning services or kitchen services or whatever he can contract out. If we adopt your recommendation to have the definition of "employer" that is used currently in the Labour Relations Act and the Employment Standards Act, will that help to remove the incentive for employers to contract out?

Ms. Darcy: If I can carry on with my example, there is no question that within, say, a library situation, it is the maintenance work where contracting out has been the most serious threat. If those jobs or certain of those jobs were contracted out, they would then be removed from the domain of that employer and we would not be in a position to compare at all. Certainly, a change in that definition should prohibit or should say that if that work were contracted out, it still has to be covered for the purposes of pay equity.

Ms. Gigantes: You would be looking then for another amendment to the



bill on this subject, or do you think the change to have a definition of "establishment" that is consistent with the other two acts would be enough?

Ms. Harris: We would like to see the other two acts further amended too, but I think we are saying, as a first step, at least be consistent with what is there.

Ms. Gigantes: Good.

Ms. Darcy: I would say there are a whole lot of things we would need to look at as far as successor rights amendments under the Labour Relations Act are concerned, which, together with the kinds of things we are talking about here, would protect everyone in that kind of situation.

Ms. Gigantes: Ms. Darcy, in your presentation, on the question of cross-bargaining comparisons, you said that when you have looked at the CUPE membership in Ontario, unless cross-bargaining comparisons were allowed under this legislation, the majority of your members would be left out in terms of getting benefits from this legislation.

Is it possible for you to assess what the significance of the 60/70 per cent comparison test would mean for CUPE membership? I know that is very difficult, because it is so dependent on each individual work place and the categories of work there, but has it been possible for you to make any assessment of that?

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Ms. Harris: Not up close, but we are basing the experience on the federal legislation and other jurisdictions. They have showed that when you give arbitrary cutoff figures, you are stuck with arbitrary cutoff figures. It held it back. If you have a group that is 58 per cent, then it is not included, because the amount is 60 per cent; so it looks like just another way of blocking a lot of women out of the legislation.

While we recognize that the legislation gives some leeway to employers and unions to sit down and look at those percentage figures, it looks to us that some of this is going to be left to the regulations to figure out how it is going to work.

That whole area of the 60 per cent to 70 per cent figure really takes us a step from saying that unions and employers have a responsibility to sit down, look at every work place, try to figure out where the wage gaps are and correct them. If you are held back by such percentage figures, it does not help to make the exercise easy. In fact, it can make it difficult. Unions have to start to make extra arguments to get other women included.

It seems to us to be arbitrarily based on the federal legislation. The Public Service Alliance of Canada has said that if those kinds of figures held, it would not have been able to succeed in some of the cases it has succeeded in, even though it was also working under very limited legislation.

Mr. Ward: I want to thank you for a very thoughtful presentation. I have a couple of general questions. What is the extent of the wage gap among those you represent? Have you done any analysis on that?

Ms. Darcy: Are you talking globally or are you talking about examples?



Mr. Ward: Within CUPE.

Ms. Darcy: I do not think we can give you any global figures. For instance, we are talking about a gap of \$3,000 between groups within libraries. If we go outside to the municipality, we are talking about maybe an additional \$2,000. I think we are talking about the same kind of thing in many of the clerical positions in the school board locals. I would say \$3,000 to \$5,000 a year is pretty standard in many of the situations where we have female-predominated and male-predominated bargaining units.

Mr. Ward: You represent both those units?

Ms. Darcy: Yes, we do. But that division into separate bargaining units is generally determined by the Ontario Labour Relations Board; it is not a division of our making.

Mr. Ward: Do you have any measurement of progress? I take it that you have never really done an analysis to identify the extent of the gap or the extent to which you are making gains and the extent to which you are not.

Ms. Genge: We do not have an overall analysis, but a lot of the female-predominated bargaining units in school boards and libraries have been trying to fight for equal pay within their jurisdictions over the last few years. In Ontario, over the last year and a half, there have been quite a few strikes by women in school boards to try to bring their wages up to the comparable group of caretakers. It is really unfortunate that they have to resort to a strike to do that. In every case they have made some progress, but the gap has not been eliminated in any case so far.

Mr. Ward: Do you ever feel any resistance on the part of male workers within your membership when you work with them?

Ms. Genge: Never.

Mr. Ward: I do not believe you. I am sorry.

Ms. Darcy: It is a piece of cake.

Ms. Genge: This is a debate that has been going on within CUPE for five, six or seven years, and ideas are changing all the time. They are way more supportive now than five, six or seven years ago.

Mr. Ward: Believe me, I do not say that as any criticism of what you do. I think you have achieved significant gains on behalf of those you represent. I am one of those who happen to believe the problem is throughout society and that even within your organizations you must have to do battle occasionally. It always struck me when I was negotiating municipally (1) that these issues were never raised in terms of pay equity and (2) that the negotiating committee was always so male-dominated, but I will leave it at that.

Ms. Darcy: We have been working on that front too.

Mr. Ward: Keep working on it.

Mr. T. O'Connor: I have a comment on that. That problem will continue as long as the correction of the problem is going to come out of male

wage packets. If they are going to pay for equalization, then one will never get away from that problem.

Ms. Darcy: Yes. I think that is a very important point.

Mr. Ward: Self-interest dictates that, I am sure. I think we all recognize the responsibility is shared. Nobody doubts the impact on transfer payments in terms of wages is probably the biggest single factor, and obviously the governments will have to share in that, but I do not think it is confined just to that either, which is perhaps where we differ.

Ms. Darcy: If I can just underline again, though, there is no question that there has been a lot of debate within our ranks about an issue like this, but the men who work beside us or who work in the next building or whatever also have wives, sisters, daughters and so on. There is no question that the issue of equal pay for work of equal value has broader support among men workers than any other women's issue. We have seen a real evolution within our union of support by the men for this. I would like to underline what Mr. O'Connor said. The position of CUPE has been very clear that it is not talking about robbing Peter to pay Paula or robbing Paula to pay Paula.

Mr. Ward: Peter does not want to be robbed or anything like that.

Ms. Darcy: We think it is not our male co-workers' responsibility to have to fork over part of their paycheques or for all the workers in a work place to have to forgo part of their general wage increase. There will be incredible division in the ranks of labour and in every work place in this province if there are not amendments to Bill 154 in that area of increasing the money.

Mr. Ward: Yes, I can understand why Peter would support this.

Mr. Baetz: Thank you very much for your brief. It certainly was comprehensive and very perceptive. I would like to ask a question on your proposals to include groups under 10 and casual workers. It refers to the funding of that particular category.

You had made the point that obviously those agencies where this would apply, where we get funding from the provincial government, should expect to get compensating money from the provincial government under transfer payments, and there can be no argument with that. Obviously, if the provincial government imposes equal pay for work of equal value on these smaller agencies, it is only just that it follow up with adequate transfer payment increases.

But--and here is my point of concern--the transfer payments will not cover an enormous number of small agencies, and now we get down to the below 10 in numbers and casuals. It will not cover hundreds and hundreds of small agencies. I am referring to small social service agencies and small recreational agencies. There are hundreds of sports governing bodies in this province organizing local hockey teams, and a lot of them have one, two, three or five workers. There are a lot of cultural agencies, symphony orchestras, for heaven's sakes--there are really hundreds of these--involving thousands of people who are not volunteers but who are in the employ of these small agencies.

Maybe your answer will dispel my concern. If we are to involve them, where in the world does the extra money come from? Does it come from the



United Way or does it come from a lot of fund-raising exercises across the province? It is no simple matter where it is not covered by government grants. I just want to emphasize that we are not talking here about a very insignificant sector in our society; it is very large. I really wonder how we can apply that to that type of body.

Ms. Gigantes: Could I ask a supplementary just to understand the nature of the question? Are you talking about agencies that basically run on a purchase-of-service agreement with the provincial government?

Mr. Baetz: No, I am talking about agencies that rely heavily on the United Way, voluntary fund-raising and charitable donations that may get some funding, say, from the Ontario Arts Council. They could get a small grant, a stipend. For instance, here in Ontario there are 54 local symphony orchestras that have two or three staff members and which get a little money from, say, the Ontario Arts Council but that have to rely on most of their money from marathons, fund-raising interests and some from the United Way or whatever, but from the voluntary sector.

This applies in the recreational field as well as in the cultural field and, of course, in the social service field. In any event, the grants they get from government are regarded as sort of a residual thing. The government does not say: "What is your budget? We will underwrite it."

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Ms. Harris: I have a comment. The labour movement had a long tradition of working for the United Way. We have looked at, from a different angle, exactly what you are talking about. When it comes to groups such as the United Way agencies, we are actually raising money and helping on those allocation panels.

Without naming specific agencies, a lot of times, when you have a close look at their budgets you start to see very well-paid positions and very low-paid positions. Sometimes the program director is making a very good salary, but the social worker is not making a good salary.

Our point here would be that at least you have to tell those agencies that there is an onus on them to sit down and look at their work place and their situation, whether the men and women are segregated in occupations and whether there is a discrepancy in the wages. Within the confines of at least the grants they do have, if there is a wage gap that is identifiable, they should do something to correct that. If it means they have to seek more money through fund-raising or apply for more grants, then that is what it will have to take.

There is a disparity in a lot of agencies. To say that this legislation will not require them to sit down and assess their work place to see what is going on and how to rectify it will leave a lot of those women out in the cold. There are a lot of women in those agencies as social workers, home care workers and a number of other occupations.

Mr. Baetz: Sure, they are in there. I simply suggest that it is not as easy for even the United Way, which has a very organized fund-raising program, to provide additional funds within whatever time period the law says it shall be. I think you are in a different atmosphere, a different environment here. With transfer payments, you can adjust overnight.



Ms. Harris: Most of those agencies are still getting so much more a year. Even the United Way, which has been struggling, has been getting five per cent or six per cent more in grants every year. The question is, how should they be using that money? If there is a requirement that they make sure their women workers are not being paid in a discriminatory practice, then it can use that money to correct a current situation.

Mr. Baetz: Yes, but I am talking about hundreds of agencies, not just the social service agencies but also sports, recreational and cultural groups that do not get United Way funds but which may get a stipend from, say, the Ontario Arts Council, the Ministry of Citizenship and Culture or whatever. They must go out and raise funds year after year. It does not necessarily follow that they can do it.

If you were to insist on it applying to those agencies with under 10 employees, a lot of them are in that category. They have five, six or seven employees or casuals. There are thousands of citizens in Ontario who are not really volunteers. Maybe they cannot afford to be volunteers, but they want to be involved in the local symphony orchestra or something like that. They work in the office and are prepared to take a very low salary because they are interested, but they cannot quite afford to be a volunteer. They are in that twilight zone.

Ms. Genge: Those people should be paid equally too. There is a contradiction in what you are saying, namely, that they cannot afford to be volunteers, so they need a wage, but they do not need equal pay.

Mr. Baetz: I do not want to get into a discussion, but I will suggest there are--

Ms. Gigantes: They could always give money back.

Mr. Chairman: Suggest it by way of question, rather than debate with the delegation.

Mr. Baetz: Do you not think there still are in our society a lot of people, some who may be retired--

Ms. Gigantes: A lot of them are women.

Mr. Baetz: No, they are not just women. Some may feel they cannot afford or do not want to contribute their services entirely on a volunteer basis, but would like to have, say, \$8,000 or \$10,000 a year. Frankly, they are casual employees. They know they are not getting what they are worth, but they want to contribute to their community.

I ask you whether you have a concern that by applying this legislation to that category of person we are not serving the public well.

Ms. Darcy: When we are talking about equal pay legislation or any legislation, I do not think we can look at the motivation for why people are in the work force. Women's motivation for being in the work force is not something that needs to be questioned. We are there for the same reason that men are there; we need to be there and we want to be there. I do not think we can get into distinguishing between one kind of agency, one kind of organization and another, or one employee in an organization and another employee in that same organization based on what motivation they have.

Many of the things you say about why people are working in those work places are the sorts of things that are said about hundreds of thousands of women workers, and our members in particular, because we work in the public service and in social service agencies. Many of the jobs you are talking about there are jobs that are traditionally female jobs. They are extensions of much of the work we do in the home. We argue that it is for that reason they have been historically undervalued. When we start making those sorts of distinctions, we are carrying on those historical inequities.

Mr. Chairman: I am going to have to bring this discussion to a conclusion. I want to thank CUPE, Ontario division, for sharing with us not only a very comprehensive brief but responding to our questions as well. On behalf of the committee, thank you for coming in to appear before us this morning.

Mr. T. O'Connor: I would like to thank the committee members for their attention and their questions. We urge you to give serious consideration to our proposals. We remind you of what we said in the closing paragraphs of our brief; namely, that if good pay equity legislation is passed, the sky is not going to fall and the world is not going to end. The other side of that coin is that failure to pass such legislation or passing legislation that is seriously flawed will be really disastrous. Thank you very much.

Mr. Chairman: Thank you. We will take a five-minute break before we go to the Board of Trade of Metropolitan Toronto. We will resume our hearings at that time.

The committee recessed at 11:07 a.m.

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Mr. Chairman: Members of the committee, I would like to get on with the next delegation to appear before us and that is the Board of Trade of Metropolitan Toronto. I would like to welcome you to the justice committee and to our discussions on Bill 154. All members have your brief in front of them. In terms of approximate time, you could break up your presentation into about half of the time allocated, followed by questions which will go on until the committee has received most of the answer it feels are necessary to clarify certain areas of your brief. Thank you for putting the time into the brief. I can see that you have spent a number of hours thinking about this very complicated subject and we look forward to hearing what you have to say. If you would perhaps just introduce yourselves, we can get started.

#### BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Campbell: Mr. Chairman and members, we are very pleased to be here. At the outset, we apologize for the fact that you just received our brief this morning. It is fairly short. We will highlight parts of it and we hope to leave lots of time for discussion.

My name is George Campbell. I am the vice-chairman of the board's labour relations committee and with me is Janice Baker, a member of the board's labour relations committee.

The brief that we have presented to you represents the views of the large numbers of individuals who are intimately involved in labour relations on a daily basis and all of their views have been synthesized and reflected in our presentation. I would like to begin by making a few preliminary comments, then Janice is going to go through the brief.



In our submission, a law, if it is to be effective, must be reasonably understood by the people who must comply with it. This bill certainly misses that objective by a wide mark. The message this committee is getting from almost all who appear before it is that the bill is highly unsatisfactory. Most unions do not like it, most women's groups do not like it and certainly employers do not like it.

The bill is far too complex, far too vague and far too onerous for employers. As it is written, if enacted into law, this bill will simply create a whole new pay equity industry. It will benefit consultants, create new bureaucracies and employers will bear costs that no one can accurately estimate. In short, it is the board's submission that this is a bill that is desperately in need of fundamental restructuring and reconsideration if it is to be understood by those who are to be bound by it.

With those few comments, we would like to turn to the submission itself for review.

Ms. Baker: As a lawyer, I would like to echo some of the concerns that Mr. Campbell has expressed. If legislation is not reasonably comprehensible to the people who are affected by it, it creates enormous problems with compliance. Employers want to obey the law. They want to comply. They want to understand their legal obligations. They want to understand the consequences to them if they do not meet those obligations, and they want to be able to conduct their affairs with some reasonable confidence that they are acting lawfully.

I and the board of trade suggest to you that this legislation, as it is drafted at present, utterly fails to meet the fundamental obligation that a statute is supposed to meet. It should not be drafted so that parties are left feeling baffled and puzzled about what to do, how to plan for it and how to integrate their new legal obligations into their existing structures and obligations. We suggest the legislation as it is drafted at present leaves everybody in that very untenable position. It does require some extremely serious review.

Having made that general statement, in our brief we have chosen a number of provisions for a closer review and we have made some detailed suggestions about how we think the legislation should be amended. I am not going to read the brief out to you word for word. You all have copies of it and you can do that at your leisure. What I would like to do is summarize for the record the specific amendments we have proposed.

First, we propose that the definition of "compensation" be eliminated or redrafted primarily because of its reference to benefits and the difficulties that are entailed in costing benefits in a way that everybody can agree on. You have a definition that from the beginning will entail disagreement and, potentially, litigation.

Our second recommendation is that the definition of "job rate" be redefined as "the regular rate of pay for a job" rather than the highest rate, because that is much more in keeping with standard and normal compensation practices. This should not really change the ultimate benefit of the bill, but it simply means that the bill is drafted in a way that is much more consistent with existing labour relations obligations and practices. That is one theme that runs through our brief.

Our third recommendation is that the definition of "job class" be



eliminated and replaced with the more standard or more accepted definition of job classification such as "a separate position whose regular duties and rate of pay can be identified." Again, our premise here is that the definitions should be comprehensible. They should be definitions that do not in themselves lead to a lot of disagreement or litigation and that are consistent with normal employment practices.

Our fourth recommendation is that the definition of "establishment" be amended to read "each discrete operating facility of the employer." To a great extent, the objective here is to bring the definition into closer line with the current practices of the Ontario Labour Relations Board and of the employment standards legislation.

I caught the last few minutes of the CUPE presentation and it seemed to have some concerns in that area too. Obviously, we are coming at it from different perspectives, but I think there is a generalized concern here to which this committee should pay very close attention; that even though pay equity is meant to be a new obligation and is meant to bring about some significant changes, it should do that as much as possible within the context of existing legislation.

Our fifth recommendation is that we eliminate the requirement for pay equity plans in that you simply have an obligation to implement pay equity by whatever date is appropriate for the company. Consistent with that, we would like to see the legislation simply use a complaint-based system, such as you find in existing human rights or employment standards legislation. We also ask that the rules in the legislation that specify the way pay equity payments are to be distributed be changed. For example, there is a section in there that deals with the fast-tracking of pay equity payments to certain employees. We would like to see all that eliminated because, to a great extent, it causes enormous complexity at the bargaining table, especially if you are bargaining with more than one union at different times of the year.

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Our next recommendation is that we would like to see the elimination of the right of pay equity officers to impose unilaterally pay equity plans on employers. We see this as a very unusual authority granted to pay equity officers who may not understand the complexities of the situation they are dealing with.

Our next recommendation deals with the various exemptions and exceptions found in the legislation. We do not quarrel with the principles of the exceptions; we find them, for the most part, quite sensible. But the way the sections are drafted now, they seem to be confused between a group exemption and an individual exemption. They are just not very clearly drafted. We would also like to see them redrafted so that they recognize--especially for small employers--that many of the exceptions they will use are not as formalized and as technically sophisticated as are found with many large employers.

Our next suggestion is that the bargaining strength exemption which exists in the bill as it is currently drafted and which deals with the situation once pay equity is achieved, ought to apply all the way through the legislation. We do not see any logical reason for allowing bargaining strength to click in only after pay equity has been achieved. If bargaining strength is a legitimate consideration--and we agree it is--it ought to be a consideration right from the beginning of the legislation's implementation.

It is also our suggestion that the sections dealing with casual and part-time employees be amended to bring them into a more consistent practice with other labour relations practices.

We also suggest that employees should not be permitted to file complaints about the appropriateness of an approved plan until a set time or until the termination date of the collective agreement. Again, this is an attempt to try to bring the legislation more into line with the already existing legal structures that bind employees, unions and employers.

We would also like to see subsection 32(4), which gives complainants anonymity, deleted. That is one of the sections that leap out at one. It is so unusual to have a situation where a complainant can remain completely anonymous from the party he or she is complaining against. That is really not at all consistent with the way our society has drafted its legislation. We would also like to see the deletion of special agency rules dealing with individual complainants.

Our final recommendations are a little more generalized and summarize much of the thrust of our recommendations, which is basically that the legislation should be consistent with, and easily integrated with, existing legislation and legal structures. For example, we would like to have it made abundantly clear in the legislation that these laws which are going to be introduced in the legislation are part of the normal labour relations process and that there should not be a duplication of remedies.

I think it is really critical to understand this. As it is currently drafted, the legislation gives the Pay Equity Commission of Ontario an exclusive, final and binding jurisdiction over certain conflicts that can arise under this legislation with regard to compensation and pay equity plans. At the same time, the Ontario Labour Relations Board has exclusive, final and binding authority to decide issues of bargaining between unions and employers. It has an exclusive, final and binding authority to implement first collective agreements where the parties are unable to agree.

Also, under the Labour Relations Act our construction industry is essentially governed by province-wide bargaining wherein any individual employer has only a small impact on the ultimate wages that are paid to his or her employees. At the same time, we have public interest arbitration legislation which gives final and binding authority to interest arbitrations to set the terms and conditions of employment, including wages and benefits.

Clearly, all these jurisdictions which are supposed to be exclusive, final and binding overlap to a great extent so that one can envisage situations where the minds of people are directed not so much to social justice but to litigating in the various forums that are available to them. We do not think that is a very productive thing to happen, but the way in which this legislation is drafted, when you look at it beside other legislation, that is going to be the inevitable result in some situations.

That essentially summarizes our recommendations. Our basic thrust is to bring the legislation ultimately into line with existing legal structures, legal requirements and legal obligations in a way that minimizes the confusion and the inability of people to plan for the future, and minimizes the litigation that could ensue from the failure to interpret the legislation in a consistent manner.

Mr. Chairman: Thank you. Do you want to make any further comment before we get to questions?



Mr. Campbell: I think if the members would turn to page 6, the third paragraph really does summarize what has just been said. This is, in fact, our major concern. I will read from that. What the board of trade fears most is the introduction of an untested system which will be so fraught with difficulty and confusion that the goal of pay equity will be lost in the confusion and litigation which arises.

This is an extremely complex piece of legislation. It will be great for lawyers. It will be great for consultants. But for the average business person it is virtually incomprehensible. Our whole thrust is to try to simplify it. At this stage, we are not disagreeing with the concept of pay equity. That was argued and lost earlier. But this bill is in need of very major redefinition.

Mr. Chairman: All right. We will move on to questions from the committee, starting with Ms. Gigantes.

Ms. Gigantes: Thank you for your brief. Could you explain a little bit about the makeup of the Board of Trade of Metropolitan Toronto?

Mr. Campbell: The board represents a broad cross-section of business and industry within Metropolitan Toronto and has within its membership about 15,500 members. The labour relations committee itself, which prepared this document for your consideration, is comprised of about 40 individuals, most of whom are senior labour relations practitioners across Ontario, many of whom have national responsibilities as well.

Ms. Gigantes: If you were looking at your membership at the board of trade, where would the bulk of the membership lie in terms of the size of the firms that your members are representative of?

Mr. Campbell: I would find that difficult to answer. I can tell you that they represent virtually all sizes within our economy. For example, some of the largest employers' groups, like the Ontario Hospital Association, are part of that structure, and some very small employers are as well. So it is a fairly comprehensive representation from all sectors.

Ms. Gigantes: Would the bulk of your membership be made up of establishments--however we define establishments; I do not know how your membership defines it--that were under 100 employees?

Mr. Campbell: I could not really tell you. We could give you those figures at another time, but I really do not have that information with me.

Ms. Gigantes: Would some of your members be employers of fewer than 10 employees?

Mr. Campbell: Likely.

Ms. Gigantes: Could you make an estimate of the percentage of your membership?

Mr. Campbell: No, I could not.

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Ms. Gigantes: If you could provide those figures later, that would be very helpful to us.



I would like to raise two points out of your brief and have a bit of discussion with you about them, if I could. One is your concern, which is a key element in what you are saying to us, that in the establishment of equal pay plans, we should really rely on employers to set up the mechanisms that would be required under equal pay legislation and rely then on a complaint-based system for the enforcement of the legislation.

You have also suggested in the area of the exemption that is permitted in section 7 for a merit-based compensation plan that if there is such a plan, which you make reference to in terms of your description of some job categories where there are levels which are simply introduced for the basis of providing a merit increase, it is not necessary for employees to know about this system of merit compensation, that the requirement under section 7 for the exemption for such systems should not be a requirement that says employees need know about its existence. Here I refer to page 7 of your brief.

Mr. Campbell: What we are talking about there is not so much a question of whether people are aware of it; people will be aware of it. What we are talking about is the degree of formalization this piece of legislation requires.

If there is a system in place, which by the definition of many employers may be an informal one but is nevertheless accepted and working and is a performance-based system, which is common in the private sector and not quite so common in the civil service, then in our submission there is no reason why that system, albeit informal by an employer's definition, should not be allowed to continue to operate. Why must an employer incur the cost of going through some formalities to achieve the same result?

Ms. Gigantes: Could you give us an example?

Mr. Campbell: If I could talk for a minute about performance pay, I know some earlier speakers said there should not be such a thing, and Ms. Baker commented regarding the job rate. In large parts of the private sector, the job rate is not the top rate in the pay scale. The job rate is normally the mid-point.

One goes beyond the mid-point based upon performance. Approximately 10 per cent of the employees in a normal compensation curve will get to the top of the pay scale. This bill says that becomes the target. What you are effectively doing is saying, "Ye shall not have performance pay plans."

Ms. Gigantes: We heard the same description of pay scales from the Council of Ontario Universities yesterday. They made exactly the same point to us. What lies behind my question here is that, essentially, you are saying to us, if we are going to have equal pay for work of equal value legislation in Ontario, leave it to the employers to decide what it is going to be in terms of--I do not know. How do you set up a plan? Are you going to describe in your plan to employees on what base?

Mr. Campbell: I do not think that is what we are saying. What we are saying is that if there are no problems, why must an employer incur the expense, almost always, by the way, outside costs, real capital outlays? This cannot be done in-house in very many firms. Why must an employer incur the expense if the employees are quite satisfied with the structure that exists?

That is the difficulty here. All of this says, "You are guilty and you will construct grand schemes to prove to people that you are innocent." We are

saying, if the employees are not unhappy with the current arrangements, why must employers incur that cost?

Ms. Gigantes: The employees might not be unhappy if they did not know there was unequal pay. The employees might not make a complaint if they do not know the base on which the compensation system used by the employer was structured.

Mr. Campbell: Part of the difficulty we see with this is that in the discussions over the last four or five years we have gone a long way away from the basic issue. The basic issue was females complaining that they were being underpaid relative to male colleagues working side by side with them. They knew they were underpaid, according to their assessment, and that was unfair.

What you are saying is that they may not know that, they may not have a concern and there may not be a problem, but now the employer has an obligation throughout this province to prove to people that you were right all along and be happy.

Ms. Gigantes: Suppose I work in a firm in Metro Toronto that employs 75 people. Under your proposal, and indeed under this legislation, I would not have access to anything that might loosely be described as an equal pay plan, so I would not know what the compensation system used by my employer was, in the employer's view, nor would I know whether there was some merit compensation scheme, however formal or informal, employed by the employer.

Mr. Campbell: Sure you would, because you would be part of it.

Ms. Gigantes: That would tell me about me, but it would not tell me about the other perhaps 70 people with whom I did not work that closely.

Mr. Campbell: Now you are getting into individual performance ratings as against evaluation systems, an entirely different matter.

Ms. Gigantes: I do not see them that way. The concern I have with the recommendation that we should not have plans--and I have a grave concern about the bill, because there are not plans for people who work--is that about 500,000 women in Ontario work for firms with fewer than 100 employees. I do not know how those women are going to find out what kind of work situation they are really in in terms of compensation practices when there is no plan being provided.

You are suggesting there should not be a plan for any size of firm. Further, when you suggest that even the exemptions, which are fairly wide in my view, written into the bill should be extended to the point where the compensation systems, which may infringe or be thought to infringe on the notion of equal pay for work of equal value, are ones that do not even have to be communicated to the employees, I have this vision. I hope you will tell me I am wrong.

Mr. Campbell: Yes.

Ms. Gigantes: I like to be able to count on some things in life.

Mr. Campbell: Or Ms. Baker may.

Ms. Gigantes: I have this vision of hundreds of thousands of women in the work place who have no way under this legislation--and there would be



many more of them under your proposal; in fact, all of them in the private sector--of knowing what the practices of the establishment they work for are in terms of the positions, how they are rated and how they are paid. How do I make a complaint?

Mr. Campbell: How do you know you have a problem? What is the fundamental basis?

Ms. Gigantes: That is it, you see. Unless you provide me with the information, how can I know I have a problem?

Mr. Campbell: To begin with, all kinds of firms already have systems in place and have had for years. This bill says you review them all to someone else's satisfaction.

Many systems are totally published. All employees know what they are. They all understand performance pay systems; so it is not as if they are a great mystery.

Ms. Gigantes: Let us leave that aside. The wage gap has not narrowed that much--

Mr. Chairman: Can you let the gentleman answer the question without your telling him how to answer it?

Ms. Gigantes: I was trying to guide him towards the question.

Mr. Chairman: You asked the question and you guided him towards the answer you wanted to hear, but I think our invited guest should be able to answer.

Ms. Gigantes: He is answering a question I did not ask.

Mr. Campbell: You are painting a picture that does not exist. That is all I can say. It is just not accurate to say there are thousands upon thousands of people who have no notion of how pay is determined in their establishments.

Mr. Charlton: Why have we had so many employers in here telling us there are? They have no systems and they do not want to create systems at all.

Mr. Dean: That is not what they have been saying.

Mr. Campbell: We are talking about the degree of formality attached to this. This says that virtually every employer, if he or she has more than 10 employees, and regardless of how well his or her compensation practices have been to date, must now go to the expense of adopting new, sophisticated and totally untried systems to demonstrate to people who may not have a concern that everything is fine.

You will recall that on an earlier occasion the board said: "We believe the best approach to this, if it is such good medicine, is to put it in the civil service first. Let it operate for a couple of years and learn from that experience." Our concern is that if this bill becomes law as it currently reads, it is going to be a nightmare. It is virtually incomprehensible.

Ms. Gigantes: You just indicated to us that you thought the systems of pay in the public sector were quite different from those in the private sector, so how will testing in the public sector help you?



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Mr. Campbell: They are different in some respects. The public sector does not have the same emphasis on performance pay systems, but you will get a lot of the other wrinkles out of it.

Ms. Gigantes: The Council of Ontario Universities would disagree with you.

You have suggested on page 10 that you do not want plans, but if you have plans, then we should not have complaints about plans. I find that hard to understand. First, an employer under your system does not have to provide a plan, but suppose your fallback position is that if there are employers who have to produce plans, and there is no union, then there should not be an ability of an employee to complain about the plan.

Mr. Campbell: At least not for some time. We are saying that you cannot have complaints ad infinitum. You post a plan, you hear nothing for two weeks, somebody complains and the system is reviewed. You revise it, you post it again and somebody complains. What this really says is, "Give the employers a bit of a break." If you are going to insist on this, then at least ensure that the plans remain in effect for some time.

Now if you look at a unionized environment, you say, "The union bargains the plan with the employer." If they cannot agree, another party steps in and determines what equal value means for that employer. Individual employees still have rights to complain about that even if it has been agreed upon. The labour relations board has a role to play in first collective agreement determination. The interest boards have a role to play. The thing is just so complicated. You say everybody can complain about it. Where does that leave an employer?

There is a fundamental problem here. The problem is--and I am not sure I can express it very well--employers are trying to run businesses. They are becoming so totally encased in legislation that they are losing sight of the objective. The objective is to run a business, produce a product and provide jobs. If you give this to an employer with 25 people, he will tear his hair out. He could not begin to understand it. That is all we are saying.

Mr. Polsinelli: He does not have to--

Mr. Campbell: No, he does not have to. He can hire counsel. He can hire a consultant. He can incur that expense to say to his employees, "See, you have always been happy and now I have spent \$200,000 to show you are happy."

Mr. Polsinelli: Mr. Campbell, if you have fewer than 100 employees, it is only a complaint-based mechanism.

Mr. Campbell: Let us talk about 101 then.

Mr. Polsinelli: Then for 25 employees, that would not apply.

Mr. Chairman: We would like you to conclude if you would, Ms. Gigantes. We have other questions.

Ms. Gigantes: One final question. When I think of the people you are talking about with 25 employees who are going to get fouled up in all the red

tape of this enormous problem of making sure that their female employees are not discriminated against on the basis of the fact that they are doing what is called women's work, I do not think of groups such as Guaranty Trust Co. of Canada, Cadbury Schweppes, Toronto-Dominion Bank, Toronto Star Newspapers Ltd., Dominion Securities Pitfield Ltd., Sears Canada, Northern Telecom Canada, the Toronto Sun, Bell Canada, Marathon Realty, Consumers' Gas and Warner-Lambert Canada. Those are the kinds of people who are on your council. Those are not employers of 25 people.

Mr. Campbell: We indicated we will give you the data. I can assure you there are such employers on council. If the big ones who have plans in place have these concerns, you can imagine how the small ones feel.

Ms. Gigantes: It is going to cost them more because they have more employees, if we ever get justice--

Mr. Campbell: In relative terms, that is debatable. GM said the other day, "If we spend two more cents, it really has to be justified." That is a big employer.

Ms. Gigantes: Indeed it should be. If it is lacking two cents an hour for women, that has to be justified too.

Mr. Chairman: No doubt by way of question, if we are going to get into a debate, we will have to wait. I understand that, but clause-by-clause debate is coming up and you will have ample opportunity to exercise your democratic right to offer your opinions with respect to the position you might hold in some of these areas.

Mr. Stevenson: On the part-time situation here, can you give me some examples of patterns in part-time jobs that you see might change because of this legislation and particularly how women who want to work part-time might well be affected by the pattern changes resulting from this legislation?

Mr. Campbell: The basic problem is that it is seldom the case that part-time employees have exactly the same benefits package as full-time employees. Regular part-time employees normally have a benefits package different again from casual employees. That is standard. There are cases in which if you cost out the benefits package for a part-time employee--and believe me, your costing is very difficult and that goes to what compensation means under this bill--you will find that in relative terms the part-time employee earns more per hour than his or her full-time counterpart. You will find other cases in which if you could cost out the total benefits arrangements, the full-time employee earns more.

If this says that under this scheme the part-time employee's wage rate has to be increased so there is a total compensation value identical, in relative terms, to the full-time employee's, then the people who could well be disadvantaged by that would be the part-time employees. Why would you pay part-time employees significantly more to get the work done than you pay a full-time employee? That is the kind of difficulty you are into when you talk about total compensation models under this sort of legislation.

I will give you another example that does not relate to full-time and part-time, but that is an extremely important issue. If you are looking at total compensation and trying to cost it all out, employees are already protected under the Human Rights Code. You cannot discriminate in benefits against people doing the same kinds of things. For example, what happens if



you give a car to one person because he must have it to do a job and the woman in the office does not have a car? Do we have a complaint under this legislation on the total compensation basis? The way the legislation reads, the answer is that indeed you would have.

On that whole issue of full-part and part-time, if part-time work becomes too expensive for employers, then why would they use part-timers? That is the difficulty they would face. If they can roll two part-time jobs into one full-time job and get the work done for less money, because of this benefits equivalency, then most employers would be inclined to do that.

Ms. Fish: May I ask a supplementary? I am having a little bit of difficulty understanding your illustration where because of the compensation, as distinct from wage, the package becomes more expensive for the part-time rather than the full-time. Does that assume you would give equivalent benefit or prorated benefit? I do not quite understand how that happens.

Mr. Campbell: There are many different schemes around. For example, in some cases, typically in the hospital sector, part-time employees get a percentage in lieu of benefits. It is not that the hospitals have not tried to implement pro rata benefits. The fact of the matter is that the unions do not agree with pro rata benefits to part-timers.

If an arbitrator awards a percentage in lieu that is less costly in one illustration than the full-time benefits package and you have to bring the part-timer up to the same rate because of the total compensation definition, then it is going to become prohibitively expensive for you to use those part-timers. If you turn it around the other way, you are going to get full-time people arguing that on an hourly basis, they are making less than part-timers. What do you do? Do you give them a wage increase to bring them into line?

It works in any number of different ways. There is no standard configuration for it. Many casual workers get no benefits. Their pay is their pay, and that is the end of it. Many of them do not really want benefits. That has to do with the degree of commitment to that organization and everything else. This is going to change fundamentally the whole relationship between full-time and part-time employment.

Mr. Stevenson: Basically, what what you are saying is that each employer, if he, she, they or whatever is really on top of the book work, will look at the effects this legislation may have on his business and may play whatever games are necessary to minimize the cost associated with it.

Mr. Campbell: I hope I did not suggest they play games.

Ms. Baker: I think we would prefer to say that any rational employer will do what he can to comply with this legislation but will make whatever rational business decisions must be made to make sure his costs are as low as possible. I do not consider that game playing; that is the way business operates.

Mr. Stevenson: I possibly used the wrong word.

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Mr. Chairman: If I might, I have a couple of questions. One of them is a small point. On page 4, in the recommendations at the bottom of the page



in quotes it says, "Each discrete operating facility of the employer." Is that a typo, or do you mean "discreet" in that context?

Ms. Baker: We mean discrete in the sense of single or apart, separate.

Mr. Dean: The opposite of concrete, which is everything together.

Mr. Polsinelli: Not discreet in the same way you interpreted it, Mr. Chairman.

Mr. Chairman: I get that. Could you elaborate a little bit on what--

Mr. Charlton: Put me on your list.

Mr. Chairman: I did not see you wanted on the list. I hope you do not mind if I carry on for a moment here.

What is your understanding of the role of the compensation officer? Once that officer has reviewed a given situation and made a judgement, which could conceivably lead to disagreement on the part of the employer, let us say, do you see that as the absolute last decision in the entire matter, or do you see any potential for appeal beyond that as the legislation is now worded?

Ms. Gigantes: Do you mean the review officer?

Mr. Chairman: Yes. There have been other words used, but the review officer.

Ms. Baker: Actually, having spent a fair bit of time working away through the various enforcement and complaint procedures, I must admit I have some problems following some of the details on that. I think that is a drafting problem. In essence, I would say the pay review officer ultimately has authority to make decisions about what the pay equity plan will be. However, in some circumstances, there is also a place for people to complain and ultimately wind up in front of the Pay Equity Commission. The Pay Equity Commission will have a hearing to deal with certain issues. There are various complaint enforcement mechanisms within the act. I suggest it is not clear exactly how those various mechanisms operate together, but I would say the pay review officer is not the ultimate authority on all the issues and complaints that can arise under the act. The Pay Equity Commission also has a role and it will hold hearings to deal with certain matters. Presumably, one could then go from there to Divisional Court if the Pay Equity Commission has exceeded or declined its jurisdiction.

Mr. Chairman: Do you see any way in which that area could be made simpler, more understandable or whatever to clarify any ambiguities that may exist with respect to what we have in the legislation now?

Ms. Baker: I would think that is a good idea. I am not sure that I could tell you right now how I would specifically redraft it. But the various sections under which you can complain, either to a review officer or to the Pay Equity Commission, are separated into different parts of the act. That causes part of the confusion because you have to try to link them together and in some of the sections they use slightly different terminology. I do not find that there is one section which brings together all the various complaint routes. Perhaps if someone were to take that approach it would make it easier to understand.

Mr. Chairman: One area you outlined in your brief, if I understand it correctly, is that where a union and an employer come to an agreement, you have some difficulty with a member of that union then complaining. You go on further to talk about the anonymous complaint and how you feel that is unfair. Even if it were not an anonymous complaint, a member of the union after the union has settled can complain as a separate entity. I wonder if you could clarify that. Is that your position? You have some areas of concern about that area as well, I understand.

Ms. Baker: Yes, we certainly do.

Mr. Chairman: In other words, you feel that once the employer has settled with the union, that should be the end of it. The employer has done his job and there should not be the right of an individual within that bargaining unit, within that union, to then disagree with what has happened relative to pay equity.

Ms. Baker: If you look at our labour relations legislation, the union is given an exclusive bargaining authority on behalf of an employee. Under the Labour Relations Act, the individual can complain to the Ontario Labour Relations Board, but the standard that has to be read is that the union is being unfair, arbitrary or discriminatory. It is not simply, "I do not like what the union did, and I disagree with it." It is a very high standard that has to be met. I would suggest that, however it is drafted in this legislation, at the very least it should be consistent with that kind of standard.

From an employer's perspective, he goes through a bargaining process. At times, bargaining can be very lengthy and very frustrating. It is not always the easiest process to go through. At the end of it, there is a certain satisfaction that you have achieved something. If you achieve that objective, and then while you are in the midst of implementing it, one or two people can bring the process to a halt, it is a very frustrating situation for everybody concerned.

Ms. Gigantes: There may be a misunderstanding there. I am damned if I am going to be able to find the section, but as I understand it, the plan goes ahead until the complaint is dealt with.

Ms. Baker: Having said that, you can see what the problem is. The plan goes ahead, you implement it and you start paying out money. Meanwhile, someone has a complaint that says: "You should not have paid out the money to X, Y and Z. It should have gone to A, B and C." That is not a very rational solution, to put it mildly.

Ms. Gigantes: If we did not have that, we could just have the National Citizens' Coalition doing complaint after complaint, which would make sure there would never be an equal pay plan in force.

Mr. Dean: Are they in place now?

Ms. Baker: Is that a question?

Mr. Polsinelli: It is the same principle the Ontario Public Service Employees Union recommended yesterday in terms of the union's position once it negotiated a plan. What the witnesses are saying is exactly the same thing Mr. Clancy said yesterday. Once a plan has been negotiated between the employer and the bargaining unit, there should be no right to complain for an individual employee.



Mr. Campbell: There is a ratification process that every union goes through. If the majority of the employees who vote on a settlement ratify it, then it is, by law, binding on all employees. This says: "No, even though you have done that, if one of the 14 per cent who did not ratify does not like it, it is all back on the table." That is the difficulty.

Ms. Gigantes: Yes. Mr. Clancy's presentation touched on that point in exactly the way you mentioned. I did not find it reasonable to think that one should go ahead with a plan which may, under this legislation, go on for 10 or 20 years, and look to the end of the plan for somebody to make a complaint. You could be dead before you could get a chance to make a complaint.

Mr. Campbell: Every collective agreement has a term of operation, and everything is subject to renegotiation.

Ms. Gigantes: You do not usually have terms of agreement that extend over 10 or 20 years.

Ms. Baker: That is precisely the point.

Mr. Campbell: I am sorry; you are misunderstanding. You have a two-year collective agreement. If in the last three months when the union files its proposals for modification, it files proposals to change the plan, so be it; they will bargain them all. Once you have bargained them and they are ratified or arbitrated, that contract is in force for two years. There is no element of a collective agreement in Ontario right now that is subject to review, revision and complaint during its term.

Ms. Gigantes: That is right; there is nothing quite like this.

Mr. Campbell: I think we say in here somewhere that a deal is a deal, and that is what we are talking about.

Mr. Chairman: I guess there are a number of those collective agreements that would not be unanimously supported by every member of the union. If you go in with an 80-20 vote, and that is ratification, you still have 20 per cent of the people who thought there should be more money, better benefits or something else.

Mr. Campbell: Absolutely.

Mr. Chairman: But they have to abide by the agreement. I think we all understand the position that has been put forward. We are running out of time, and I want to move on to a couple of other things and then get to Mr. Charlton.

I have a little problem. I understand you do not like what is being proposed in Bill 154. To make it more workable, what is it that you want us to do with that one per cent of the payroll? You are not really giving me the direction I would like to have if we look at any amendments with respect to how the money is to be distributed, to what classes of employees and under what circumstances. I am talking about the one per cent maximum of payroll that would be accumulated and then ostensibly distributed.

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Ms. Baker: Let me try to outline the problem more clearly. If as an employer you have two or three collective agreements with two or three unions,



with different expiry dates, and you have a nonunionized group that you have to set up a pay equity plan for, you are in the position of having to set up three or four pay equity plans. Your collective agreements with the unions may expire in different years or in different months of the same year. You try to bargain with each union what the compensation and benefits for the agreement should be, and you include as part of that process how your pay equity plan will be developed and if there should be any payments pursuant to that. This goes on at different times.

Somehow or other you have to decide how this one per cent is going to be distributed. You have to decide that among competing unions, each one of which quite rationally should say, "We are the ones who get the lion's share." The first one up to the bargaining table is naturally going to want to grab as much as possible. I am not being critical; I think that is just very natural. Each union is going to want to achieve the best for its employees.

How do you decide with the first union to the bargaining table exactly what the amount of money should be, because you know your obligation is potentially one per cent distributed over several other groups that are not at that bargaining table. Also, your nonunionized people are not at the bargaining table. It is a very practical problem. How do you and the union know exactly what the amount of money should be?

One possible way to deal with that is to restrict the distribution to the payroll for that group. That is one possible way to deal with it. I can see problems arising out of that too. It is going to be extremely difficult for the employer and the union to know precisely how they should distribute it. Because there is a statutory minimum, if, at the end of your bargaining with your last union, somehow your total distribution has not met that one per cent, what do you then do? I think it is a very practical problem for both sides of the bargaining table.

Mr. Chairman: I have one quick question and then I will turn it over to Mr. Charlton. I apologize that we are going as late as we are.

You remained silent on a point I thought the board of trade might have offered some opinion on, unless I missed it in your presentation, that is, with respect to the proposal within the present bill for a minimum of 10 employees to be the cutoff point. Do you have an opinion on that? Do you see that as being a reasonable number?

Let me just background it by saying that we have had some groups come in and suggest that there should be no exemptions and that the figures should be zero up, perhaps with some phase-in for larger firms with larger numbers of employees. We have had some business groups come in and suggest, although they do not like the legislation, that if it is implemented, it should not start until there is a minimum of 20 employees, because it could be disastrous to very small firms.

We are faced with the polarization of two very distinct positions on this, which we are going to have to come to grips with when we finally look at the amendments to the legislation. Can I have your opinion? Have you discussed this with the board of trade and come up with any kind of recommendation?

Mr. Campbell: If I am not mistaken--and do not hold me to this--I believe we addressed that in an earlier brief, the brief before the public consultation panel. We do agree that there should be some cutoff. What exactly the magic number is we did not address in this submission, but we are pleased to see that at least those small employers are exempted from it.

Part of the difficulty is not just a question of cost. If you are running a firm with four or five employees, you really do not have those kinds of difficulties, or should not have. You do not have the masses of people where you can get pay discrepancies, if there will be pay discrepancies. It is much more pragmatic. If you have four people, they know what they are being paid and you know if you have a problem. I just do not see it as an issue in a lot of smaller firms. By the same token, they should not have to go to the same expense we discussed earlier to prove there is not a problem.

One thing that concerns me as an individual with that section is the notion in the legislation that if you ever get 10, even if it is only for a short time, you are bound. If you ever reach the threshold, even though you drop back down, you become bound for ever.

In a small firm, if it gets into a busy season and its work force is not very elastic in terms of taking on additional production, you may have to staff up to get that done and then you down-size again. This bill says if you ever do that, you are caught for ever. Frankly, I do not understand the concept that drives that notion.

Mr. Chairman: Conceivably, that could cost employment, I would think. By way of a question, if somebody had eight or nine employees, had a seasonal upswing and was going to hire five employees but recognized that would catch him in the pay equity mechanism, I would think some employers might not hire those four or five people to stay under the 10.

Mr. Campbell: They may assess the value of the additional job against the potential consequences. You are absolutely correct.

Mr. Chairman: I have a few other questions, but I had better let Mr. Charlton take over. He has been waiting very patiently.

Mr. Charlton: I would quickly like to go back to the full-time/part-time thing we were discussing earlier. I guess it is to be expected, but you have presented that question almost exclusively in a negative sense.

It seems to me if you read the second paragraph on page 2 of your brief, what you are saying to us is that in some sectors, and even with some of your members, there are going to be a number of people who used to have full-time jobs and are now part-timers who may get their full-time jobs back, especially in the retail sector.

Mr. Campbell: First, we see no reason for talking about total compensation. That is a separate issue. There is already protection in law if you are being discriminated against on other than direct wage matters. To us, it is redundant and unnecessary and very, very costly to cost.

What we are really saying here is that we do not have a clue what the fallout could be from this in the long run. We know there is different treatment. We think a lot of part-time employees could suffer as a result, unnecessarily, because they are getting the same basic wage as the full-timer. That is what we are talking about. We are not pinning any--

Mr. Charlton: Why is it then that part-timers and casuals had to fight so hard over the years to try to get at the questions you are trying to take away from them?



Mr. Campbell: I can give you some briefs put to arbitrators in major public sectors of Ontario in which employers argued strenuously to give part-time employees pro rata benefits, but unions said: "No. Part-timers like the cash in their hands."

Mr. Charlton: There have been cases like that.

Mr. Campbell: There is a certain myth attached to part-timers.

Mr. Charlton: Just as many and more cases have gone the other way. I have been a part of some of them.

Mr. Campbell: Sir, if you understand the full consequences of that section, then you understand this issue much better than we do.

Mr. Charlton: Let us go back to what you have said here. Tell us who these people are who have so little regard for their operation and the quality of their personnel that they are going to go running out and starting to cut back behind the one-third question? What kind of employers are going to do that? Tell us who they are.

Mr. Campbell: If it makes no sense for an employer to pay a part-time employee more in relative terms than a full-time employee, then I would suggest any astute business person is going to look at how he can reduce his costs.

Ms. Gigantes: We should take out the exemptions so you will not be tempted.

Mr. Campbell: Which exemption?

Ms. Gigantes: For part-timers who work less than one third--

Mr. Campbell: That is not the issue here. It is the definition of compensation that is the issue.

Ms. Gigantes: You said that was a separate issue, but we are addressing this one. We can remove the temptation in the bill, because I agree with you that it is a temptation, .

Mr. Campbell: To do what?

Ms. Gigantes: To reduce the hours of part-timers to below the one-third minimum that is established in the bill.

Mr. Charlton: So we take that out and solve that part of it.

Ms. Gigantes: Yes. We just take out the exemption.

Mr. Campbell: Well, we could debate that. In fact, it does not do that, because we are talking about a different issue. We are no longer talking about equating salaries. This bill now goes way beyond that to talk about all the other things an employee may or may not receive that are never even an issue having to do with equal pay.

Mr. Charlton: You have been talking about negotiations rather extensively. When an employer goes into negotiations with his union, does he go into negotiations and talk about salaries?



Mr. Campbell: Yes, of course.

Mr. Charlton: Without talking about benefits?

Mr. Campbell: No.

Mr. Charlton: I have never heard an employer say, "You cannot have six per cent; you can have only four per cent, because the other two went into benefits."

Ms. Baker: I am sorry. Say that again.

Mr. Charlton: If you do not talk about the whole package, somebody loses, and it is the employee who loses.

Mr. Campbell: You bargain benefits for part-timers too. Very often they do not want the same benefits package. That is the point we are trying to make.

Mr. Charlton: That is true.

Mr. Campbell: This says that if they want something different and if at the end of the day it costs out differently, give them the balance. If that is not what this law says, please correct us. That is as we read it.

Ms. Gigantes: That law says you have to add it all up. That seems reasonable.

Mr. Charlton: That is right. That is exactly what part-timers who do not want the same benefits package go after. If they do not want the same benefits package, they want to get the equivalent some other way. All we are saying is that the total has to come to the same in relative terms.

Mr. Polsinelli: Is the point here that you could be talking about a part-timer earning \$10 an hour and a full-timer earning \$9 an hour plus benefits?

Mr. Campbell: On a total compensation basis.

Mr. Polsinelli: On total compensation. Is that what we are talking about?

Mr. Campbell: Or the other way around, because the target has always been equivalency of rates of pay. While bargainable, benefits have always been a separate issue in that regard. Now pay equity has moved from "What am I paid?" to "What is my total compensation worth?" Doing the analysis to figure that out is extremely complicated, even using computers, and is full of judgement.

Ms. Baker: Just as a minor point on the benefits issue, one of the things the definition does not address is how you cost out benefits, given that some people do not take all the benefits. When you are looking at it from a costing perspective as an employer, you are looking at your total benefits cost. My benefits cost 10 per cent or 14 per cent of what my pay is, whatever it is. Individual employees have a choice in many cases of which benefits they will take. They may have coverage through a spouse of their health and welfare benefits and may decide not to take the benefits or they may have different dependency relationships. Each individual's actual cost of benefits varies

with whether he is covered elsewhere, whether he has dependants and whether he actually wants to choose that particular benefit.

If you are comparing individuals or particular classifications, on what basis do you decide what the benefits cost should be? Is it what it is actually costing you for those individuals or what it could cost you if they took every benefit or what it is costing for the group. The statute does not address that at all.

Mr. Charlton: I have one further question. The record should be set straight on this issue as well. If we take what you are saying to us, you may be able to find five cases of it in Ontario, but if we average in the compensation packages of part-time women in Ontario, it pulls women's wages down to less than 50 per cent of male wages. The situation you are talking about where a part-timer is going to end up making more than a full-timer is going to be so rare that you will only be able to find five or six in the entire province.

Mr. Campbell: I will give you one if you wish that was arbitrated a week ago, four per cent more for a part-timer equivalency than for full-timers. That is not that uncommon.

Ms. Gigantes: That is why we should have full compensation comparisons.

Mr. Campbell: That is right.

Mr. Charlton: Can you perhaps tell us how many or what percentage of your members are unionized and therefore have collective agreements?

Mr. Campbell: I could not tell you that. If we look at a lot of the employers even listed in the documents, we could not give you precise figures. I am sorry.

Mr. Charlton: Could you give us a rough idea?

Mr. Campbell: I would not hazard a guess.

Mr. Chairman: I would like to thank the board of trade for an interesting submission and for assisting us and perhaps giving a better perception of the overview of business of this proposed legislation. Thank you very much.

The committee recessed at 12:25 p.m.







STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

THURSDAY, MARCH 5, 1987

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Staff:

Evans, C., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Canadian Union of Educational Workers:

Gold, K., Secretary

Doyon, C., President

From the Equal Pay Coalition:

Cornish, M.

Spink, M.

From the Council of Ontario Construction Associations:

Frame, D., Executive Vice-President

Spratt, J., Chairman

Humphrey, S., Assistant Executive Director and Pay Equity Chairman

From the Ontario Women's Directorate:

Marlatt, J., Director, Consultative Services Branch

From the Coalition on Employment Equity for Persons with Disabilities:

Main, J., Executive Member, Blind Organization of Ontario with Self-help Tactics

Clifford, S., Co-ordinator, Life Skills and Peer Counselling, Regional Office, Persons United for Self-Help in Ontario

Glazier, K., Regional Co-ordinator, Multiple Sclerosis Society of Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, March 5, 1987

The committee resumed at 2:07 p.m. in committee room 1.

PAY EQUITY ACT  
(continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Welcome, members of the committee. I would like to get on with this afternoon's hearings. The first group that wishes to make a presentation is the Canadian Union of Educational Workers. However, before you start, I would like to have the parliamentary assistant to the minister make a few brief remarks. I guess it is the studies he wants to make some comment on. We will hear from the parliamentary assistant first and then we will move on to the delegation. I apologize for the slight delay, but we will be right back to you.

Mr. Ward: I would like to clarify for the committee some outstanding questions that were raised. Some of the responses will be a reiteration of previous responses, but with regard to the legal opinion, we have advised you that the legal advice we have received is that the proposed legislation is constitutional. However, we do not intend to release the legal opinion itself. As you are aware, confidentiality is the basis of the solicitor-client relationship. This principle applies to governments as well as to private citizens. This confidentiality is recognized, not only by the proposed freedom-of-information legislation but by our judicial system as well.

With reference to studies that were done for the Ontario women's directorate, in drafting the proposed legislation the government consulted with a number of people in regard to the collective-bargaining issue. First, officials of the Ministry of Labour were part of the interministerial committees on pay equity. Second, various labour leaders were consulted through the Premier's Labour Advisory Committee on Pay Equity.

The Ontario women's directorate has had a consultant prepare a study entitled Pay Equity in the Context of Collective Bargaining. As yet, we have not received the consultants' report on this, but a copy of this report will be provided to the committee as soon as we are in receipt of it. With reference to the labour advisory committee and the Premier's Business Advisory Committee on Pay Equity, as the committee is well aware, the Ontario women's directorate provided funding for both the labour and business advisory committees to retain students and consultants to gather information, both from businesses and from labour organizations, to formulate its recommendations in regard to the proposed legislation.

I would like to clarify that the Ontario women's directorate did receive some of the studies from the labour advisory committee. The labour advisory committee has given its consent to have its studies and its recommendations given to the committee. We have a full set of these studies, and I will be making copies of them available to the committee.





The studies prepared for the business advisory committee were done on the basis that the confidentiality of the material would be preserved. The studies are therefore not in the hands of the government and, in fact, material of this nature would not be made available under the proposed freedom-of-information legislation. None the less, the committee's request was passed on to the business advisory committee for its consideration.

Mr. Chairman: Are there any questions with regard to the statement made by the parliamentary assistant? There being none, I like to thank the parliamentary assistant. May I ask that you make those notes available to the clerk? Since you read them into the record, we would appreciate that. You can do that at any time convenient to you. Right now would be just fine.

Let me welcome the delegation before us this afternoon from the Canadian Union of Educational Workers. We would like to get on with your presentation to the committee. If you can arrange it, approximately half the time should be left for questions from committee members. We ask you to introduce yourselves. I think your names are listed accurately on the agenda that has been circulated to the members of the committee, but we want to know who you are. You can go ahead whenever you are ready.

#### CANADIAN UNION OF EDUCATIONAL WORKERS

Ms. Gold: I would like to begin. I am Karen Gold and I am the national secretary of CUEW. To my left is Lee Wiggins who is a member of York University CUEW and is active in the women's committee there. To my right is Charles Doyon who is the national president of CUEW.

We would like to thank the committee for giving us the opportunity to come to express our views on Bill 154. CUEW represents approximately 8,000 workers in the post-secondary educational system. We represent people who do part-time teaching or research and those who are employed on a sessional basis at our post-secondary educational institutions.

Given some of the statements made yesterday by the Council of Ontario Universities, we hope this clears up any ambiguities concerning the status of our members within the educational work place or concerning the nature of our bargaining units. We support the government's initiative in tabling legislation that will apply to workers in the broader public and private sectors. The drafting of such legislation recognizes the existence of wage discrimination against women and the need for pay equity adjustments to redress the undervaluing of their work.

Clear lines of gender segregation exist in the labour force of our educational institutions. Women are highly represented in the support staff labour force, in CUEW and in similar part-time bargaining units. Gender segregation also exists in the separation of part-time versus full-time faculty. Women represent only 20 per cent of full-time faculty and a full 50 per cent of the part-time and sessional teaching force.

Given the unequal status of women in our academic institutions, pay equity is an important and immediate issue for us. From this perspective, we see serious problems with Bill 154 as it now stands and it will require substantial changes to make it truly fair to women workers in Ontario.





We would first like to bring to your attention some of the general concerns we have with Bill 154.

The first is timing. The time frame set out in Bill 154 is longer than necessary and will mean only that women will continue to suffer from wage inequities. We feel that the time frame for the entire period of wage adjustments should be changed to two to five years, retroactive from the effective date of this legislation. Contrary to the opinions of some employers, we feel this is adequate time to negotiate a gender-neutral compensation system and to complete appropriate adjustments.

As the purpose of equal pay for work of equal value is to bring women's wages up to their full value, subsection 5(3) should be amended so that women have the right to pay adjustments equal to the highest comparable male rate. Also, the bill assumes pay equity is achieved when the job rates are equal. It is thus unclear to us what the implications will be for women who have not reached the top rate in their job class.

Exclusions and exemptions: The bill currently allows for exemptions that we feel would undermine the spirit and strength of true equal value mechanisms. We urge the deletion in subsection 7(1) of temporary employee training or development assignments, merit compensation, red-circling and skills shortage. Similarly, the exemption of casual employees stated in subsection 7(3) should be removed. In addition, to ensure a fair and universal standard, we feel the exclusion of women who work in smaller establishments, as set out in subsection 2(2), should be similarly deleted.

It is our fear that the exemptions listed above could lead to the further ghettoization of certain types of women's jobs and could be open to manipulation by some employers so that whole categories of workers would be unable to take advantage of pay equity. Further, by stipulating that red-circling is an acceptable practice, the bill seriously threatens the rights of all employees. The general wages of employees must not be adversely affected if an employer must pay out adjustments to correct discriminatory wage practices.

In subsection 7(2), the bill allows for differences in compensation after "pay equity has been achieved" on the basis of differences in bargaining strength. This would only serve to reinforce existing inequities in the labour force by allowing the relative weakness of some female-dominant bargaining units to be used as a justification for further wage inequality.

The following issues are of particular concern to us as part-time educational workers.

Gender predominance: The inflexible numerical definition of gender predominance as set out in section 1 would severely limit the effectiveness of this legislation. Eligibility for pay equity should be established according to flexible guidelines that may include the historical ratio of women and men in a particular job, gender stereotypes and historical segregation of the labour force by sex.

For example, taking into account traditional and current labour patterns, there is a striking relationship between gender and part-time employment status. This is substantiated by the Commission of Inquiry into Part-Time Work by the Department of Labour in 1983. Their analysis shows: "...the dominance of women in part-time work and of men in full-time work. Women comprise 72 per cent of all part-time workers but only 35 per cent of



all full-time workers." This labour force phenomenon is directly related to the traditional stereotype of women who are often incorrectly assumed to be less committed to their work or in less financial need.

The feminization of part-time work means that women often work for lower pay, fewer benefits and less job security because of the lack of recognition this work receives. This part-time labour force represents a type of occupational ghetto that needs to be addressed.

This general pattern is clearly reflected in the academic labour force where women are highly represented in the part-time and sessional labour force compared to their full-time counterparts. While the work they do is invaluable to our educational institutions, it remains systematically undervalued. The undervaluing of this work is not the result of lower qualifications or less commitment to teaching, but rather the result of systemic discrimination and segregation of women in the academic work place.

The problem with the inflexible numerical cutoff can also be seen when we look at the situation of part-time faculty at the University of Ottawa. While a full 59 per cent of these employees are women, they would not necessarily qualify for inclusion under the present legislation. There are 600 employees in the bargaining unit at the University of Ottawa. That means we are six women, or one per cent, short of achieving gender predominance as defined by this bill. The unequal gender division of labour in our academic institutions is clear. What we need are flexible guidelines to establish these patterns so that a part-time class of workers could be compared, for example, to a class of full-time workers.

The next issue is the right to seek broader comparisons. The limited basis of comparison set out in subsections 5(4) and 5(5) of the bill would severely limit the rights of women part-time workers.

As defined by the Ontario Labour Relations Board, there are generally different bargaining units designated to represent part-time workers and full time workers. Given that women dominate the part-time work force and are thus segregated into bargaining units for part-time employees, the bill must allow for cross-bargaining-unit comparisons.

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The existence of separate bargaining units within an establishment often reflects the existing gender division of labour. Therefore, by limiting allowable comparisons, the bill will leave gender-based job ghettos basically intact. To make cross-bargaining-unit comparisons effective, employees and unions should have the right or option of establishing a jointly negotiated method for achieving equal pay for work of equal value. Further, because of the restrictions on comparability in this bill, women who work in all-female establishments will have no access. The bill must therefore allow for these women to receive compensation within the same time frame as other workers.

The next issue is funding. As workers in the broader public sector, we feel the impact of funding restraints. In fact, underfunding was the major reason for the proliferation of part-time faculty in our educational institutions. If we are to be able to take advantage of pay equity legislation, then the government must be prepared to cover the costs involved in establishments that rely on public funding. We cannot allow the funds for





pay equity adjustments to come out of the existing funds of an already overburdened and underfinanced system.

Although overall grants to our post-secondary educational institutions have been increasing, this does not accurately reflect their financial needs. In fact, grants per student actually decreased by more than 17 per cent between the years 1977 and 1985. It is therefore essential that the provincial government provide specially targeted funds to cover the costs of implementation and compensation.

Further, to protect the collective-bargaining rights and the general wages of employees, the bill must ensure that there are separate funds for the purpose of pay equity adjustments. Otherwise, employers could easily confuse or conflate the funds available for pay equity adjustments and the general wage increases all employees are entitled to. The bill must give assurance and protection to employees that pay equity adjustments will not come out of their wages. It is not the employees who have been benefiting from discriminatory wage practices, and they should not be the ones to pay for measures to equalize them.

The integrity of the regular collective-bargaining process and the rights of organized workers must not be undermined by the bill. As the purpose of pay equity is to adjust historic injustices, unions must have the right to bargain pay equity separately from the regular collective-bargaining process. We must also have the flexibility to negotiate the kind of method used to achieve equal pay for work of equal value.

It should also be recognized that the Labour Relations Act ensures that the employer retain all management rights, duties and responsibilities, except as modified by a collective agreement. Given that employees and unions do not have equal bargaining power in negotiating plans nor control over the funds for compensation, it is unfair and unreasonable for unions to be equally liable. Rather, unions should have the duty to bargain in good faith and fairly represent their members in negotiations for gender-neutral compensation practices and be assured access to all relevant information.

The final issue is ensuring the rights of part-time workers. The Commission of Inquiry into Part-time Work also makes the recommendation that part-time workers be ensured the same protection, same rights and same benefits on a prorated basis as those guaranteed full-time workers. It goes on to recommend that given the large numbers of women in this employment category, part-time workers should be covered by equal pay for work of equal value legislation. It is thus crucial that the rights of female part-time workers be recognized in the application of any pay equity legislation, and that part-time workers be eligible for adjustments in compensation based on their comparison with workers in other bargaining units.

In conclusion, the Canadian Union of Educational Workers has been an active participant in the Equal Pay Coalition. We fully support and endorse the recommendations put forward by this coalition and hope that these recommendations are incorporated into the bill.

Finally, considering the important role equal pay for work of equal value plays in the fight to achieve employment equity for women and the extreme intransigence some employers have showed towards pay equity initiatives, it is crucial that this bill be amended to provide for fair and effective legislation.





Mr. Chairman: Thank you very much. Are there any other comments from any members of your delegation? There being none, we will move to questions.

Mr. Polsinelli: Thank you, Ms. Gold, for your presentation. I would like to ask you a question about the recommendation you make with respect to gender predominance. As I am sure you are aware, section 1 defines or sets out a minimum standard for female and male job classes, 60 per cent. Clause (b) indicates that could be negotiated between the employer and the bargaining unit, or a review officer has the ability to establish what a female job class is.

Subsection 1(4) of the bill then says that in deciding what a female job class is, "regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations."

Does that effectively cover your recommendation, or are you recommending more than that?

Ms. Gold: We are aware of those sections giving the powers to the commission and the other variables. The problem is that we do not want it to be considered an exemption, which we would then have to go to the Pay Equity Commission and argue for and try to get a ruling on. The definition is 60 per cent, or 70 per cent for men. An employer will look at that and say: "That is it. If you have a problem with that, try to go and figure it out." That puts the onus on us to have to go and argue this, when in fairness we should be recognized as a female-predominant job class. The whole process will take longer, and it would not be necessary if there were flexible guidelines set out at the beginning in the bill itself.

Mr. Polsinelli: I see that. The legislation does say that 60 per cent and 70 per cent are minimum standards and that they can vary. It does set up guidelines under subsection 1(4) as to how to increase the number of female job classes. I do not understand your recommendation, because effectively what I am hearing from you is that perhaps the legislation should set out what other types of occupations have historically been predominantly occupied by females. Is that what you are recommending, that perhaps a schedule be enumerated?

Ms. Gold: No, we do not want the legislation to set out the actual occupations. What we want it to do is establish a very general flexible guideline that will be able to be negotiated so that something like our 59 per cent would not have to be considered an exemption. If it was less than 59 per cent, we could argue on flexible guidelines, given certain variables. These were some of the variables I mentioned, such as stereotypes and traditional labour patterns, that we could then establish.

I think that putting right in the bill the first definition of a female job class as 60 per cent sets a certain standard, which we do not think would allow for the people we are talking about. It is too inflexible.

Mr. Polsinelli: I think what is happening is that you are misinterpreting the bill. As I read the legislation, what it does set up is a minimum standard. If a job class has 60 per cent female predominance in it, then automatically that becomes a female job class. However, that could be increased by factors such as gender predominance, historical segregation and historical incumbency of the job. Rather than setting up an exclusionary mechanism, it sets up a minimum number, where automatically the females form



part of the predominant job class, or the predominant job class is identified as a predominant female job class, that being the 60 per cent figure. It is setting up factors which would allow the expansion of the types of job classes by looking at such factors as gender predominance and historical incumbency. I think it is just a way of looking at the legislation, but I would submit that what you are recommending is already in the bill.

Ms. Gold: Briefly, if the intention is to have flexible guidelines, it should just be stated as such and not give an inflexible numerical cutoff.

Mr. Polsinelli: Again, that is not an inflexible numerical cutoff. If that 60 per cent was not there and you had a situation where 60 per cent of a particular job class was female, you would then have to argue on some other factors to have that included as a predominantly female job class. What that 60 per cent figure does, rather than establishing an inflexible guideline, is to set up a minimum guideline.

We may be arguing rhetorically, but I see it as a minimum and you see it as inflexible. I think this is a more progressive way of looking at it.

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Ms. Gold: It is semantics.

Ms. Gigantes: You are getting yourself balled up is what.

Mr. Polsinelli: No, I am not.

Mr. Charlton: Sure you are. If it is a minimum, how are you going to go below it?

Mr. Polsinelli: What?

Mr. Charlton: If it is a minimum, how is it flexible? How do you go below a minimum?

Mr. Polsinelli: What you do by going below it is you look at such things as gender predominance and historical incumbency, and you bargain.

Ms. Gigantes: You just looked at gender predominance and said it had to be 60 per cent, so do not beat it.

Mr. Polsinelli: No, that is a minimum. If you have 60 per cent, you automatically include it. If you have less than 60 per cent, then you argue subsection 1(4), which says you can look at factors such as gender predominance, historical incumbency and the other factors that are enumerated.

Mr. Chairman: Did you want to perhaps redirect that question to the parliamentary assistant for an interpretation?

Mr. Polsinelli: No, I did not.

Mr. Chairman: You did not want to do that. I thought maybe you might want to have done that.

Mr. Polsinelli: No. The parliamentary assistant is free to make his comment on that.





Mr. Chairman: However, seeing that the parliamentary assistant does not want to respond to the question you did not raise, I will give the floor back to you. Are you through?

Mr. Polsinelli: I am through.

Mr. Chairman: You certainly are.

Ms. Gigantes: I would like to thank you for your presentation. It seems to me to be extremely clear, even though Mr. Polsinelli seems to have some difficulty understanding it. It seems to me a great deal clearer than the legislation, in particular on this point.

If I could, I would like to ask that you tell us about those 600 people at the typical university. What kind of jobs do they do? How many of them are part-time?

Ms. Gold: The status of our members and the nature of the work they basically do?

Ms. Gigantes: Yes. It would be the University of Ottawa with its 600 members and 59 per cent female predominance within the part-time faculty.

Ms. Gold: We have 600 members at the University of Ottawa, which you bring up, and they are all part-time faculty. Other CUEW bargaining units include other kinds of workers also; some are solely part-timers. Some include part-timers and teaching assistants.

Ms. Gigantes: But at the University of Ottawa it is only part-time faculty?

Ms. Gold: Yes.

Ms. Gigantes: If they are to be compared within that bargaining unit, what is to be compared?

Mr. Doyon: There is absolutely nothing to compare them with because they are all part-time faculty. Therefore, there are no different job classifications that they can be compared with among themselves. The only comparison group that would perhaps make sense in the university environment would be full-time faculty, because as part-time faculty they need to have the same basic qualifications as full-time faculty members. Therefore, as with the full-time faculty, approximately 80 per cent of them have PhDs or other professional degrees. As well, as professionals, like the full-time faculty, they are required to be continually doing research, upgrading their skills and that sort of thing.

Ms. Gigantes: Is there a significant difference in wages if you account for the time worked?

Mr. Doyon: On average, part-time faculty make one third the wage of full-time faculty.

Ms. Gigantes: That is not because of the hours worked?

Mr. Doyon: In many cases we actually work more than full-time faculty.





Ms. Gigantes: What you have just described is one university with one bargaining unit representing part-time university teachers, fully qualified, working hard, getting paid a third the salary of the full-time staff. You said to us that if applied in that situation, this legislation would create an argument with the employer about whether you in fact fall under the legislation for purposes of job comparison and therefore consideration of equal pay adjustments. You have also said to us that under this legislation, you would not have anybody with whom to compare the women in this bargaining unit unless you could go outside the bargaining unit.

Ms. Gold: That is correct.

Ms. Gigantes: You would have two hurdles to jump before you even got to the question of what adjustments might be made for women working in this situation--in fact for the men too, because they would be swept along the same comparison if you could get outside the bargaining unit.

Ms. Gold: That is right.

Ms. Gigantes: This legislation does not look too helpful, does it?

Mr. Doyon: It is especially a problem for part-time workers because of the Labour Relations Act in Ontario with, on the whole, workers who work fewer than 24 hours in a week having to form their own type of bargaining units. Their bargaining units tend to be mirror images of full-time workers' bargaining units. Therefore, internal types of comparisons are basically meaningless.

We would suggest that the real drift for almost all part-time workers would be comparison with full-time workers. That is a major concern on our part.

In our situation, not hours of work, but the type of work and the amount of work we put in are major component parts and were not issues in the actual certification for our bargaining units. Because we tend to represent one type of worker, internal comparisons are just not appropriate or helpful at all.

Ms. Gigantes: It might be of interest to you that this morning we had it suggested to us by the Board of Trade of Metropolitan Toronto that if we have the inclusion of part-time workers within the legislation on the basis presented in the legislation--in other words, if part-time workers are working one third of the normal work load of full-time employees--what we would be inviting employers to do is to hire part-timers for less than one third of the time. They would hire more part-timers for shorter hours.

This whole exemption seems to create difficulties on all sides. It does for you in your situation, and it creates an incentive for employers to try to get around an exemption built into the current proposed legislation. It is helpful to understand what it means in your situation. Thank you very much for your presentation.

Mr. Baetz: I would also like to thank you for your presentation. I just have a question under your collective bargaining section. You state there, "The integrity of the regular collective bargaining process and the rights of organized workers must not be undermined by the bill." What, if any, clause in the bill as it now stands do you feel could undermine the collective bargaining process? You must have some concern there, or you would not raise this question.



Ms. Gold: Yes, we do have some concerns. Generally, our concerns are listed. We feel that unions must have the right, as set out in the bill, to bargain pay equity separately from the regular bargaining process, have the flexibility to negotiate what kind of method will be used to address equal pay for work of equal value and should not be liable, as set out in the legislation. Those are the specific concerns we have about protecting the rights of organized workers.

Mr. Baetz: In that observation, and you have mentioned it in the text, is the flexibility to negotiate the kind of method used to achieve equal pay for work of equal value. For a nouveau on this, would you describe that a little further? You say the right must be yours to establish some method by which you hope to achieve this. What are some of the things that are encompassed in that?

Ms. Gold: Our basic concern is that we do not want anything specific imposed or implied by the bill. Negotiation should be able to take place to establish the method. If a negotiation process took place and they decided not to use a certain job evaluation scheme or whatever, there would be other methods available, leaving that open and flexible, so they could negotiate that.

Mr. Baetz: Certainly the bill as it now stands, spells out a great deal of the method that will be followed. Obviously, there must be some concern in the back of your mind that it could infringe somewhat on your traditional rights in this area.

Ms. Gold: Yes. The point of this is to make sure there is flexibility for both the employer and the employees to negotiate the kind of method--I use the word "method" as a broad category--to achieve the purposes of equal pay for work of equal value. That does not necessarily mean that a job evaluation scheme has to be imposed as the method used. That is the general point we wanted to make.

Mr. Baetz: Yes, but you do not see that it needs to be spelled out explicitly with the addition of some clause or the amendment of some clause as it now stands. Are you just saying, "This is a statement of principle"?

Ms. Gold: It is a statement of principle, but we would like the bill to reflect that by allowing for this flexibility to negotiate other methods.

Mr. Baetz: Which is not there right now.

Ms. Gold: Yes.

Ms. Gigantes: May I just ask a supplementary that might help Mr. Baetz?

Mr. Chairman: Very briefly, because we are running late.

Ms. Gigantes: For example, out of the system of the 60 per cent to 70 per cent ratio test, would you consider the possibility of negotiating a different scheme from just within bargaining units, these kinds of things?

Ms. Gold: Yes.





Mr. Chairman: May I thank you for your presentation and for responding to the questions on the part of the committee.

Ms. Gold: Thank you.

Mr. Chairman: The next group that we have coming before us, members of the committee, is the Equal Pay Coalition and I would ask the representatives from that organization to get ready to come forward.

I might add that with respect to the Equal Pay Coalition we have provided some additional time for this organization because of their long standing interest in the question of pay equity.

We welcome you to discussions on Bill 154 and I know you have been following with some interest what has been going on in this committee. We look forward to hearing your presentation and I am sure there will be some interesting questions to follow, so if you would perhaps introduce yourselves and then we will get started.

#### EQUAL PAY COALITION

Ms. Cornish: Thank you, Mr. Chairman, members of the committee. My name is Mary Cornish and with me is Lyn Spink from the Canadian Union of Public Employees local 79. We will be presenting on behalf of the Equal Pay Coalition today. We represent, as can be seen from page one of our brief, over 30 organizations. It is a broad-based coalition of organizations representing over one million Ontario men and women, and nationally, with our member group the National Action Committee on the Status of Women from whom I believe you heard earlier this week, we represent over three million women and men nationally.

I should indicate just in terms of the representation issue that actually the coalition is very unique in representing the diversity of groups including public and private sector management in our business and women's groups that are in the groups, public and private sector unions, immigrant women's groups, the YWCA. All of these types of groups bring to this process a very long expertise with respect to the issue.

We have had a very extensive consultation process with our members over the year but we do not have staff, unlike the Canadian Manufacturers' Association and the Board of Trade of Metropolitan Toronto and many of the management groups. We are a volunteer organization, but as many of you know, we are not amateurs in this field and we have been working together for a long period in order to obtain equal pay for work of equal value.

You will see the brief is fairly long and quite detailed in some provisions. This afternoon what we will attempt to do is to highlight some of the critical issues.

We see it as essential that each of the changes we ultimately looked at, because they are important, be seen together as a means of implementing equal pay for work of equal value.

We have divided our presentation into four sections. First, Ms. Spinks will give us an analysis of some of the arguments you have been hearing against the bill over the past two weeks from the business community.

Second, I will do an explanation of our recommendations regarding the





basic implementation of equal value standard as we see it.

Third, Ms. Spinks will summarize our proposals concerning the extension of coverage of the bill.

Finally, I will explain some of the legal mechanisms we are proposing for closing the wage gap, guaranteeing individual protections, guaranteeing and enforcing the collective bargaining process, and improving the administration and enforcement of the bill.

I will call on Ms. Spinks now to start with an analysis of some of the arguments you have been hearing against the bill.

Ms. Spinks: What I would like to do is look at the arguments you have been hearing from some business groups in the context of the studies that were released last week, the studies on small business and pay equity.

There are three myths that many of the business groups are invoking. The first myth is that there is no wage gap; the second is that the market is neutral, that it is governed by the law of supply and demand; the third is that bringing in pay equity means bringing on dire consequences.

The first, that there is no evidence of wage discrimination has been put most stridently to you by David Somerville of the National Citizens' Coalition.

I was pleased to see your committee was quick to point out to Mr. Somerville the contradiction of denying, on the one hand, that there is any wage gap at all and affirming, on the other, that we are going to have economic ruin if Bill 154 goes ahead. We know you are not going to be bullied by Mr. Somerville's kind of rhetoric, but we also hope you are not going to be enticed by some of the more thoughtful presentations from various business organizations that do not like the bill, because although they choose their words more carefully than Mr. Somerville, the assumptions that underlie their presentations are not that much different from those of the National Citizens' Coalition.

The National Citizens' Coalition says there is no such thing as wage discrimination. The Canadian Manufacturers' Association says there is not much of a gap, maybe at most three per cent. The Retail Council of Canada and other organizations question the existence of the gap.

But what do the studies show?

The study done by Blackhurst von Beinum surveyed a cross-section of firms with between one and 99 employees. What they found was that the larger the firm, the larger the gap is likely to be. The study by Hay Management Consultants surveyed the same range of firms. What they found was that women were making between \$1 an hour and \$4 an hour less than men.

Suddenly, employers are telling you: "Okay, if there is a gap, employment equity, not pay equity, is the answer. The solution is for women to move into men's jobs. Let them drive the trucks. Let them be the neurosurgeons." What they forget is that for women to change jobs, men have to switch jobs too, and we know men are not going to work for women's wages. Affirmative action is not the route to economic equality for the majority of women who are clerks, day care workers, production workers and nurses.

The second myth you have been hearing came first from Mr. Somerville.



"Annual wage levels are set by neutral market forces. The single most important determinant of wages," he said, "is the law of supply and demand." The Canadian Manufacturers' Association told you the market is neutral and others echo Mr. Somerville's litany of the law of supply and demand as if they were talking about a natural force that affects everyone equally, like the weather or gravity.

But there is nothing natural or neutral about the market. Historically, the market has discriminated. We know women take home less on payday. This genuflecting at the altar of the market is just that, a gesture, and it is not based on fact. Look at those studies that were released last week.

The Urban Dimensions group surveyed firms with between one and 100 employees. They asked them how they set wages. Respondents could choose several categories. Over half said merit; 35 per cent chose their ability to pay as one of their categories. Only 26 per cent listed supply and demand as one of the factors they took into account when setting wages, and 32 per cent said they paid their employees above the market. The study done by Hay is even more compelling. Of the employers who did not use a formal job evaluation process for setting wages, only 14 per cent said they used the market. The conclusion Hay reached is that the free market is not commonly used by small business to assess jobs.

So what is all the fuss about?

Here we come to the myth of the dire consequences; the threat. You have been told jobs will disappear, that the economy will falter under the strain of equal pay. But what is small business really afraid of?

Look at the studies. Hay asked businesses what the impact of equal pay legislation would mean to them and 55 per cent said pay equity legislation would have a negative impact, but how did business describe that impact? Only 2.5 per cent worried about the cost. Only five per cent were worried about unemployment. Hay says the major complaint related not to the cost of implementation, but to government control. Business is worried about the potential onslaught of paper, not the loss of jobs. The real fuss is that opponents to equal pay have a basic aversion to government regulation of business. Mr. Somerville even told you he was against health and safety and human rights legislation.

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The government has made good use of the studies that were done. They have got the message that small business does not like pay equity, and under Bill 154 firms with fewer than 100 employees will not have any forms to fill out.

Opponents are also telling you that comparing jobs is impossibly complex. Suddenly the entrepreneurs with verve and imagination, the people who have been telling you they are the engine of the Ontario economy, are baffled. They cannot cope. They do not know how they are going to compare jobs. I call it the fruit cocktail problem. They say, "What are we are going to do with the apples and oranges?" But if you look at the bill, you will see that job evaluation is not the only route to equal pay, and if you look at the studies you will see that assessing jobs is not something impossibly complex.

The Urban Dimensions group, which was looking at firms with fewer than 100 employees, found that 33 per cent of those firms had fewer than five





job titles in their establishments. They found that 71 per cent of those small businesses had 10 or fewer job titles. You do not need Peat Marwick to figure out a suitable pay scale for these situations. In fact, only four per cent of the firms in that study said, "It cannot be done," when asked about pay equity. We believe it can be done too.

The threat of dire consequences is being used to play upon your sensitivity as politicians because you have to worry about public opinion and the voters and the public's concern about the economy. There is no question that there is public support for equal pay. We have included in the appendix to our brief a 1987 Angus Reid-Southam News poll which found that 67 per cent of Ontario respondents believed women at the same skill levels as men were generally paid less. Of the people who perceived this wage gap, 85 per cent favoured strong legislation to correct the situation. There is no question that there is strong public support for equal pay for work of equal value.

As for the impact on the economy, opponents are talking about equal pay as if the wage adjustments that are going to be given to women are going to be money down the drain, as if women are going to put the money under the mattress or bury it out in the backyard. That is not what is going to happen. Equal pay adjustments for women mean money that is going to go back into the economy, money that is going to buy food, clothes for the kids and furniture.

Ms. Cornish: I will now proceed with the substance of our recommendations concerning the implementation of equal pay for work of equal value. Our basic response to the bill reflects our analysis of how the bill measures up to the International Labour Organization's standard of equal pay for work of equal value. Essentially that labour standard, which has been the foundation of the coalition's position for the past 10 years, involves the following basic principles.

1. The purpose of the legislation is to implement an equal value standard.
2. There must be universal coverage for all women workers. Every woman in Ontario, and all those doing women's work, must have the right to complain where their work is of comparable value to that of a male group or job.
3. The legislation has to have a complaint procedure plus some kind of proactive provisions.
4. The collective-bargaining process should be used where applicable.
5. There has to be realistic but expeditious time frames to complete the adjustments.

If we look at this bill, there are many strengths to the bill that we will note here. The bill recognizes the systematic undervaluation of women's work. It recognizes that there must be some complaint procedure and it recognizes the proactive provisions for some employers. It includes some part-time workers. It respects, to some extent, the collective-bargaining process.

There are some basic strengths that make this bill far superior to the original Bill 105 and one that the Equal Pay Coalition is able to work with as a basic structure. Unfortunately, it still falls far short of meeting the equal value standard. It does that in a variety of ways, which I will go through. Our basic position is that at this point, since we have waited so





long for the legislation, it is essential that we not falter in implementing it, but rather implement the full equal value standard.

If you look at the bill, nowhere in it does it say the equal pay for work of equal value standard or the failure to act on that standard is unlawful. That is something that must be included in the bill. It is our position that the failure to implement the full equal value standard is, in fact, a violation of the Charter of Rights and Freedoms. Essentially, without it, workers doing women's work are not equally protected from wage discrimination, as are men doing men's work.

To understand the difference between the approach in the bill and the equal-value standard, it is important to look at the different terms. To some extent, it will assist. The words "pay equity" have been used in the Minnesota, Manitoba and Ontario legislation as essentially a one-shot approach to equal pay for work of equal value. It is an approach that provides for adjustments to women's pay--not to all women's pay--over a limited period.

It is a method of reducing the wage gap caused by the undervaluation of women's work, but it is not a method of eliminating it altogether and in perpetuity. It is a time-limited version. To that extent, that is how we distinguish that we want an equal value standard in the bill which is not time-limited and not a one-shot approach, because pay equity by itself is not enough. Pay equity is a means to achieve equal value. In some ways in the bill, it has a connotation of the proactive measures which is an important means to achieve equal value, but it is not the end.

Accordingly, we ask that the bill be amended to provide specifically for the equal value standard, and as we go through various other amendments, ensuring that standard is there in perpetuity.

One of the other factors in relation to this is the fixed-predominance test. Perhaps I can clarify a little around that issue. One of the difficulties we have with the bill is that while it is better than Bill 105 in that it provides for some discretion concerning the flexible guidelines and Bill 105 did not, it still institutionalizes the notion of fixed guidelines. People who are familiar with labour relations will understand that employers do get their minds around a number and essentially say in negotiations: "This is it. Anything below this is out."

What you are doing by having the initial basic figure and requiring employees and unions to go to the Pay Equity Commission is essentially leaving them with no remedy at the outset. They have to go through a long procedure in order to establish that they should be covered, rather than leaving them with the initial flexible test. In either event, the 60 per cent test is very high.

If you look at Quebec, it has adopted a simple majority test of 50 per cent plus one. In a recent study for the municipality of Metropolitan Toronto, Peat Marwick used a 50 per cent plus one test. It is very important that you see that the issue of 60 per cent and 70 per cent is an arbitrary designation. The work force is 43 per cent women and maybe we should use 43 per cent.

It is one of the problems because 70 per cent was used in Manitoba. It was the same kind of process, where all of a sudden that became institutionalized as gender predominance. Ever since then, we have been trying to fight back against that figure. We have a 60 per cent figure, which is somewhat lower, but it is still very arbitrary considering that various federal settlements all started off with job groupings that were lower than



that figure. They would have been required to go to a commission before they could have been in a position to establish anything different.

That is why we have difficulty with it and would ask, in the proactive phase, for flexible guidelines without the mention of numbers, and in the complaint phase, that there be no requirement for establishing gender predominance.

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In terms of the complaint procedure, we would like to distinguish between equal value complaints and proactive complaints. At the moment, the bill provides only that those covered by proactive plans can challenge the propriety of the plan. Once the plan is completed, they can challenge whether there is some change in circumstance, but basically, they do not have an ongoing complaint procedure. That is part of our position as to why it is not equal pay for work of equal value in perpetuity. Accordingly, we think that when the proactive phase ends, they have to be able to complain that they are not receiving equal pay for work of equal value wages.

During the proactive phase, we recognize that there have to be some adjustments to the fact that you have a proactive phase. We have suggested that those covered during the proactive phase have some restriction in that their individual complaints should not hold up the proactive plans, but that a person would have the right to complain that the plan would not achieve equal pay for work of equal value for her. They could take that, initially, to their bargaining committee, and if it could not be resolved, it would then go to the commission.

In terms of those not covered by equal value plans, they have to have a basic right to complain that their wages are not equal value wages. We will be dealing with how we intend to divide those who are covered by proactive and equal value plans. The basic complaint procedure is extremely important and we regard it as the basic safety net of what women require. While it is important to have a proactive system, again, to some extent the whole basic right to complain has been lost in the move to proaction. The coalition has always been strongly in favour of a complaint procedure. We welcome the proactive requirements but the International Labour Organization standard requires a strong complaint procedure. That is the right federal and Quebec workers have, and it is a right Ontario workers should have as well.

In addition, we think you have to look at a shorter implementation period. We see that can be done in varying ways. Essentially, we feel there has to be a collapsing of the divisions of the employers who are there at present as well as a collapsing of the time. At present, the bill creates varying standards of justice depending on the number of employees in your work place. This is a fairly arbitrary distinction and I do not think that arguments based on cost or complexity can really be used to justify the distinctions.

While we are prepared to live with some minimal period of adjustment, we think that the lengthy delays envisaged by the bill are not conscionable. You have to keep in mind that while there are employer concerns here, you do have women every day taking home a paycheck that is discounted by 34 per cent. We are prepared to agree to a two-year adjustment period before employers will be liable for wage adjustments, but we consider that any longer period than that is unacceptable and that the cost of this concession to working women is already considerable. It is important in dealing with all these issues if you





calculate it out, essentially, and think of the cost to women of just the two-year time frame we are talking about.

If you would see our position, we would start off, first, two years from the proclamation date when employers would become liable for wage adjustments. At that point, we would suggest that the proactive employers would be those who are unionized and those who have 100 or more employees. We suggest that for two reasons.

First, if you have a unionized work place, it is ideally suited for proactive requirements. According to the ILO standard, collective bargaining should be utilized to identify those processes and it would be in compliance with that standard to make all those work places that are unionized subject to proactive requirements. There is a bargaining agent and a history of bargaining pay practices. A substantial number of women who would fall below the present 100-employee test would still be unionized. Then you would keep the 100 and over as proactive in the present bill.

The employers who would be subject only to complaints would be those who are 100 employees or fewer. Ms. Spink will be dealing with the exemption for 10 and under. Those employees in the 100 employees or fewer and their employers would be able to opt into the proactive requirements if they wished.

At this point we talk about how to minimize the delay in pay adjustments once you get to this two-year period. It appears to us that there is no reason why there should be lengthy delays in the bill in terms of even the proactive phase. We are prepared to agree that the public sector could be the first to make its pay adjustment. It would do that at year 2. However, we are proposing that all the proactive private employers, the unionized employers and those over 100, could have one additional year to identify the pay inequities, but at that point they would make retroactive payments to year 2.

While there is an argument that you may need time to identify pay inequity, there is really no argument that at that point you should not pay back the money, if the only reason for the delay is the time required to implement; in other words, employers could be budgeting now for pay adjustments from year 2, but given an extra year to actually identify the precise pay inequity. Those who would be subject only to the complaint procedure would be liable for wage adjustment as of year 2. They would be subject to a complaint procedure through the Pay Equity Commission.

The bill also provides for an indeterminate number of years in order to achieve pay equity and it depends on how wide the wage gap is in the work place. The wider it is with the restriction of one per cent payroll, the longer it will take for pay equity to be achieved. The one per cent figure does not recognize that the pay gap will vary, sometimes quite extensively, from one work place to another. For example, the public service wage gap is 78 per cent or 22 per cent, whereas the overall wage gap is 34 per cent. Obviously, the reduction of the wage gap at one per cent of payroll would happen much more quickly to the civil service at a one per cent figure than it would in the private sector.

We suggest that there has to be some kind of time period within which workers in the province get pay equity. We are suggesting a five-year time period in the proactive phase. In the first year, we are content that there be this one per cent of payroll, in order that employers can identify it more quickly and as a concession to employers.





After that, it is our position that the balance of the pay adjustment as identified must then be divided into four equal annual instalments with a minimum amount of one per cent to be paid out in each year. In other words, if you had a 10 per cent payroll requirement, you would pay out one per cent in year 2, 2.25 per cent in year 3, 2.25 per cent in year 4 and onwards, until the entire 10 per cent payroll requirement in the work place had been completed in the five years starting from year 2.

However, if only a three per cent payroll wage gap were found, then you would pay out one per cent for three years. That way we think those who suffer the largest pay discrimination will not be required to wait the longest period. The other thing to remember with respect to the one per cent figure--and again this is one of the figures that arrived from Manitoba and Minnesota--is that in the Manitoba civil service the one per cent figure was a calculation based on analysis of the job groupings as to what it would take to reduce the wage gap in four years.

It was a reasonably scientific estimate of that situation, but it has been imported into a situation which is not a public sector situation and applied overall throughout all work places in the province where it does not accurately estimate what the wage gap is. Ultimately, it is a budgeting technique to ensure that employers are not required to pay more than that amount of money. We are saying we will agree to that budgeting technique for one year but, after that, you will phase it in over the four subsequent years.

I am now going to hand the microphone back to Ms. Spink to deal with the issue of coverage.

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Ms. Spink: In the times I have been here listening to the committee in the past two weeks there have been questions about numbers. I think we all agree that it is very difficult to come up with some precise numbers, but before I talk specifically about our recommendations, I would like to take you through some very rough calculations I have done to come up with an idea of how many working women in Ontario would be excluded from the provisions of the bill as it stands now. I will then be making arguments to you that the bill should be amended in order to include a greater number of working women.

I have taken the figure from the Ontario women's directorate of the total female work force as being just under two million. The first thing I looked at was the provision in section 7 excluding certain kinds of casuals. The minimum hourly cutoff was 12.5 hours a week. It seemed to me that was the most difficult concept to come up with a number for.

What I did was to go to the report of the Wallace commission, which was issued by the federal Department of Labour in 1983. That report contains the most comprehensive statistics on part-time work in Canada that I know anywhere. What the commission did was take a snapshot of all the part-time workers in Canada during one week. Much to the astonishment of the commission, it found that 30 per cent of the women who were working part-time were working fewer than 15 hours a week.

That is not 12.5, but I figure there is an hour and a half difference between 14 hours and 12.5 hours. On the basis of the number of part-time female workers in Ontario I calculated the number who would be excluded by that provision.



I then took the number of women who work in establishments of fewer than 10 employees. The next thing I did--and this is very rough--was to figure how many women would be excluded by the 60 per cent gender predominance test. I looked at the Metropolitan Toronto Local 79 bargaining unit and was able to get figures from management staff at Metro about the number of women and men in each job category.

I found that five per cent of the women who work for Metro Toronto would be excluded by the 60 per cent gender predominance guideline. That is a very conservative estimate because 60 per cent of the people who work at Metro are female, and that is greater than the number of women in the work force.

I then took a very conservative figure of the number of women who work in all-female work places. I was not able to come up with the number of people working in nursing homes or libraries, but we do have figures for day care workers and several of the social service agencies. When we add up all those figures, we find that more than 500,000 women in Ontario are going to be excluded from the provisions of the bill as it stands now; 28 per cent of the female work force will not be eligible for equal pay adjustments as the bill stands now.

It is in that context that I want to talk to you about some of the amendments that we are looking for. Many of the employer groups have made submissions to you proposing amendments which would further restrict the number of workers who would be covered by the bill and would also restrict the comparisons that are available to those who are covered.

We do not find this surprising, given that the amendments are proposed in the context of assumptions that are foreign to the very premise of the bill. The Ontario Chamber of Commerce has told you that its amendments are in the context of its position that the central premise on which the bill rests is of dubious reliability. The Canadian Manufacturers' Association has told you that it is opposed to the concept of legislated pay equity.

The amendments from the opponents to the bill are designed to undermine the effectiveness of the bill as a piece of pay equity legislation, and what the amendments are calling for is something less than pay equity legislation. The Retail Council of Canada has suggested to you that you do away with the under 10 guideline but that you replace it with a minimum incumbency rule of perhaps five. We are very pleased that the bill does not include a minimum incumbency rule.

We feel that requiring there to be a particular number of women or men in a job before it can be compared is prejudicial to employees in smaller work places where there are fewer employees. Especially because men's jobs are more finely differentiated than women's jobs, because there are many more job categories for men, this would mean there would be fewer jobs available for women to compare themselves with. We are very pleased there is not a minimum incumbency standard.

There is one clarification we feel is necessary, and that is in the definition of "job class" in subsection 1(1). Because a plural is used, it appears that two employees are required in a position for the act to apply. We would like to see that changed to the singular in order to make it perfectly clear that comparisons can be allowed between jobs with single incumbents.

You heard a very eloquent presentation from the Ontario Coalition for Better Day Care suggesting there should be a provision in the bill to ensure





that all female work places are covered. As you know, the bill offers absolutely no coverage for women who are working in all-female work places.

We know that all three parties are sympathetic to the dilemma of women who are in female job ghettos, and we would like to see some legislative amendment to accompany that sympathy. The simplest way to cover such workers would be to give the Pay Equity Commission the explicit power to compare the wages of women in female job ghettos with an appropriate male group and to order the necessary wage adjustments on the same timetable as the workers who are covered by the bill as it stands.

On the question of the exclusion of employers with fewer than 10 employees, almost every number we see in the bill is a loophole or an open invitation for the employers to manipulate their way out of being covered by the legislation.

One of the things I would like to draw to your attention is the study done by Blackhurst van Beinum and Associates, which considered as a hypothesis what it would mean if we were to exclude firms with fewer than 20 employees. When Blackhurst then assessed the weaknesses of that approach, one of the comments made was that companies with fewer than 20 employees may be reluctant to add two or three additional workers and move into a different regulatory level.

A large number of female workers with this significant wage gap would be left to voluntary compliance and may feel concerned, and advocates for pay equity may see it as a cop-out. That points out very well the dangers of exclusions based on a particular number. It is an open invitation to an employer to keep his work force under that level. The fact that firms with fewer than 10 employees are excluded means that 238,800 women in Ontario will not be covered by the bill. That is 12.4 per cent of the female work force.

We believe that this exclusion violates section 15 of the Charter of Rights and Freedoms, and it is a fundamental part of our position that all workers in Ontario must at least have access to the complaint mechanism. We do not believe there is a precedent for the exclusion of workers on the basis of the size of their work place in the Employment Standards Act, for instance.

Some of the employer groups that have appeared before you have suggested that this level be raised from 10 to 50. I think the Canadian Federation of Independent Business was proposing that you change that guideline to 50. If you were to do that, that would exclude another 12.4 per cent of the female work force. On the basis of the studies, it seems that the government is making a political decision in excluding firms of that size, because the firms with fewer than 10 employees make up 84 per cent of the small businesses in Ontario.

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The exclusion will please a large number of people who are owners of small businesses, but we do not think it can be justified. We think this is an arbitrary standard. The Urban Dimensions group concluded, in the study it did, that it might be a good idea to exclude firms with fewer than 10 employees. The reason they gave for that was that the firms would require extensive assistance in preparing pay equity plans, but as the bill stands, our position is that firms of this size are not required to prepare pay equity plans and that at the very least their employees ought to be able to file complaints.





The next area I want to look at is the exclusions in section 7. Because I see that time is moving on and because I know that many groups have made extensive presentations to you about the exclusions, I will simply note that the bill enshrines all the exceptions the green paper put forward for discussion. We find this to be a great disappointment. The only exception we can recognize is seniority applied in a nondiscriminatory manner.

Subsections 7(3) and 7(4) of the bill pertain to casual workers. If you look at subsection 7(4), you will see that the drafters of the bill have, in a very convoluted way, attempted to define what a genuine casual position is and what should be exempted. It is clear that the intention behind that subsection is to discourage employers who may want to turn regular part-time jobs into casual jobs. We admire the attempt but do not think it is successful.

We want to remind you that "casual" is a word that usually defines an employee's status; it is not the definition of a particular position. We feel that in defining a casual worker or part-time worker it is appropriate to turn again to the Wallace commission, the report of which is the definitive report on part-time work. Their definition is one which includes on-call casuals. This is what we are concerned about.

As the Ontario Nurses' Association pointed out in its presentation, the on-call casual is in fact excluded from the provisions of the bill as it stands. These provisions are really an incentive for employers to convert regularly scheduled part-time jobs to casual jobs and then, within the casual work force, to keep the number of hours they assign to their casuals below that minimum.

I can briefly give you an example. The local I work with, Canadian Union of Public Employees Local 79, represents the largest bargaining unit of casual workers in Canada. We have a fairly new bargaining unit with 1,300 casual workers. At the rate the employer is converting full-time jobs to casual jobs, we are going to have the largest bargaining unit of casual workers in the universe.

The way in which work is assigned is that senior people get regularly scheduled work and all people are eligible for call-in work. The amount of work available for call-in, which is really the bulk of the work, depends upon the rate of illness of the full-time workers whom the part-time workers are replacing.

In a winter month when you have a flu epidemic, some of these people would be eligible under the bill, probably all of them, because they would be working enough hours, but in other seasons when people are healthier, a good proportion of this bargaining unit would not be eligible under the provisions of the bill, because by definition they work irregular hours. They are working on a continuous but always irregular basis. We urge you very strongly to delete the sections of the bill that exclude casual employees from coverage.

Mr. Chairman: Ms. Cornish and Ms. Spink, I want to remind you that there will be questions. I wonder whether you have some indication of when you might be wrapping up your presentation because we have other groups to follow and I do not want to cut the committee off in any questions it may wish to address to you. Can you perhaps go into high gear and come to a conclusion as quickly as you can?

Ms. Spink: High gear? Fine. I had my foot on the brake.



Mr. Chairman: I do not like to do this, but I must.

Ms. Spink: Ms. Cornish will take over.

Mr. Chairman: All right. If you can come to an appropriate pause in your presentation, I sense there will be questions.

Ms. Cornish: I will highlight some of the legal mechanisms we think are important in implementing the bill. I will note some of the pages for you and that may assist you in referring to this.

The first is that it is essential to have a separate fund where employers will have a separate budget allocation. This is important to ensure that we can make sure workers are not paying the price of equal value from their own normal wage increases. Second, the commission will be able to monitor whether the pay adjustments are being made. This is similar, for example, to how employers set aside money for taxation purposes. In addition, we are making a recommendation that pay equity funds be put into trust in the same way vacation pay is held in trust under the Employment Standards Act. This will also help in the event of any closure of a business. Furthermore, we have provisions, found on page 38, to strengthen the transition protections to make sure employers will not in fact widen the wage gap during the two-year period.

In addition, you will see there are provisions on page 38 to ensure that employees are able to have third-party complaints. The bill currently states an employee can appoint a third party to take over a complaint and appear before the commission, but we think there should be a procedure whereby anybody with reasonable grounds could initially file the complaint and, in addition, that the commission has the power to file a complaint.

This is why we also see that to make sure unorganized workers, those workers who are most in need of it, have protection under the bill, there has to be the access to information that is not currently in the bill. On page 35 we deal with our recommendations as to how both employees and bargaining-unit representatives must have access to information, as in the Manitoba legislation.

We also say that in terms of unorganized employees, there must be the right for third-party complaints. Also, the bill must be amended to ensure that there is a monitoring power of the review officers over not only the proactive plans, as the bill currently states, but also over those employers who are subject only to the complaint procedure, because that is the only way in which those people who are subject only to the complaint procedure will have some assurance that the bill will be implemented for them. We do not want the complaint procedure to be a hollow mechanism.

In addition, we see that there must be resources provided to the nonorganized worker. One mechanism might be pay equity clinics, which would help those employees, some of whom may have proactive plans because they are with an employer who has 100 and more and is not unionized, and those who are not, to file complaints. These kinds of mechanisms are essential in order that they have real rights.

The next issue is the law and collective bargaining. There has been a





long history of collective bargaining in this province and we are concerned in various ways with the way the bill is currently structured.

Section 6 presently provides that both the union and the employer are liable for noncompliance of the act with respect to the implementation of equal pay for work of equal value. It is our position that this type of provision misunderstands the appropriate roles and responsibilities of an employer and a union.

Employers in this province are the ones who are responsible for compensation practices. They are the ones who own the businesses. They have access to the funds and the more detailed access to the information. The unions have an obligation, and a strong obligation, to bargain for pay equity, to bargain in good faith and to represent their employees fairly. Accordingly, we propose deleting the portion of section 6 making them equally liable for compliance with the act, and instead amending it to say that they have a duty to seek the implementation of gender-biased compensation practices and in the process, to represent their members fairly. We think this more clearly delineates their duty and it would be similar to the types of responsibilities they have under the Labour Relations Act.

In addition, we urge you to delete the exemption for bargaining strength that is included in the bill. You have heard from the unions that they do not want this exemption. Mr. Scott has indicated this exemption was put in to protect unions. I think you have heard the final word on that point, that unions in this province want to see the end of pay discrimination, that historically in the collective-bargaining process there have been more male workers unionized and that what will happen if you have the exemption is that for a brief moment of time in the 1990s, under the present bill, we may have pay equity but it will very quickly be replaced by the reassertion of bargaining strength by male-dominated units.

It may be that the exemption is in there because employers do not wish their employees to be able to get the male-bargaining-unit wages. I think that may be a more accurate indication of what it is there for. From our point of view, we think it defeats the purpose of equal value.

In addition, we want to see an amendment that the provisions in the bill are a minimum requirement only. This would be similar to the provision in the Employment Standards Act and would allow unions and employees to bargain for a standard that would be in excess of the bill, and indicate that is a possibility. As it is now, it may be that employers will say to unions: "This is it. There is no requirement or obligation at all to bargain with you over this issue on anything in excess of what is in the bill."

Turning to the administration of the act, there are various technical amendments concerning the adjudicative body. We think there should be a separate adjudicative body. This would leave the commission free for a more active role. We think there must be resources given to the commission. There must be enough panels so that the adjudicative body can hear the complaints. I think we are all familiar with adjudicative bodies in this province that essentially do not have enough money to have enough staff to carry out their responsibilities under the act. That is certainly true of the Ontario Human Rights Commission at the moment. We may have had all the fuss over Bill 7, but essentially if you cannot enforce it, it does not matter what the legislative committee members may have done.

In relation to the review officer procedure, we think that the procedure





of conciliation should be optional and not mandatory. We think that there should be no power to make an order without a hearing and that there should be a minimum time frame in which the commission would make the order. We would suggest a 90-day time frame.

In conclusion, our basic thrust is that we do not wish to see variable standards of justice based on chance or circumstance, depending on where women are located in this province. We want to see the bill invigorated so that it will be a bill that will live up to the legal commitment to implement equal pay for work of equal value.

As you consider the amendments and go through the committee stage, there is sometimes a tendency in this process to weigh equally the amendments put forward by the business community and by women's groups and the unions. We ask you to recognize that this is not an equal process because for the past eons and centuries women have been paid unfairly. It is not appropriate at this time to split the difference and give the business community part of its amendments and us some of ours.

At this point, you have to remember that for each concession that is made, you are finding working women who cannot even basically get above the poverty line. It is a serious situation. It is not, in our view, the time to take pity on the business community. It has some real concerns but we think we have more than adequately met those concerns in the concessions that are already in the proposal before you.

Mr. Chairman: Thank you for a very comprehensive overview of your position with respect to Bill 154. I am going to move on to questions which I am going to allocate equitably in terms of time, to the extent that I can. I will rotate the questions. I will start with Ms. Gigantes for about five minutes and then move on from there to someone else for about five minutes. We will try to keep it as fair as we possibly can in terms of rotation.

Ms. Gigantes: I would like to thank you for your presentation. Bravo! It was really well done and it is a testament to the years of work that the Equal Pay Coalition has put in on this problem. I would like to indicate that your estimates are the first we have had of any kind, from anybody, that indicate to us how many women are potentially excluded from the benefits of this legislation. That I welcome very much.

May I ask you a tiny bit more about those estimates? It seems to me that when we leave the exemption open for employers to play around with part-time, on-call casual categories of work, we may be opening up an exclusion so that we encourage employers to move to types of part-time work under one third of normal hours of work with a full-time employee, or to on-call casual work that had some benefits for the employer but not the benefit of being able to say, "I don't gotta worry about equal pay because I can exclude these people and then I get my numbers down to the right proportions and I don't have to worry."

Ms. Spink: That is right. You may feel we are being overly ungenerous or sinister about our feelings that employers may do what they can to get themselves outside the law. I do not think that is a sinister view. I think it is simply realistic and I might give an example of the bargaining unit of 1,300 going on 1,400 casuals we have at Metro.

An arbitrator awarded us prorated benefits and the casuals get benefits on the basis of number of hours they have worked. Since we got that award, the employer has increased the number of casuals in the bargaining unit by 40 per



cent. So while casuals are eligible for benefits, because there are more and more casuals getting fewer and fewer hours, the benefit provisions have effectively been neutralized. I see no reason to expect that it would be any different with pay equity legislation.

Ms. Gigantes: In fact, we had it proposed to us this morning by the Board of Trade of Metropolitan Toronto that employers would do that unless we exempted all part-time workers from this bill and its clauses.

Ms. Spink: I think the message is fairly strong that none of them should be exempted.

Ms. Gigantes: Could you say a few more words about merit compensation plans and skills shortages, as they are addressed in the bill.

Ms. Cornish: Essentially, the problem the coalition has had, historically, with the issue of merit exemption is that in the experience of the people in our groups, the merit exemption has always been used as an exemption in a gender-biased way. In other words, because it involves an analysis of somebody's merit, historically, women have been perceived to have less merit than men.

Ms. Gigantes: You have never heard, never seen nor never had demonstrated to you in all your years of working on this issue, a merit compensation plan that was not gender-biased?

Ms. Cornish: We have not seen one.

Ms. Gigantes: You have never heard of one?

Ms. Cornish: We have never seen one put forward by the business community that would be gender biased. On the other hand, what we have seen is frequent employment standards cases where employers have used merit to defeat the present equal pay complaints because it is such a wide-based exemption. Merit is something about which you can have very broad views. To some extent we have had to rush a bit, but I think there is some attempt made in the bill--and I think this is true of all the exceptions--to try to narrow and cut off some of the problems with the exemptions. As a labour lawyer, I have a fair amount of experience in dealing with employers who look at a piece of legislation and try to figure out a way around it. They generally do it and they have more resources to do it.

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In the rush, I did not mention it but we are proposing what is called the bad apple rule, which is essentially that there should be something in the bill to deal with employers who will attempt to restructure their businesses to avoid compliance with the act. While employers may well strictly comply with the act all the way around, in essence there may be a scheme to avoid compliance with the act by setting up the nine-and-fewer-employees establishment or the 49-and-fewer-employees establishment, by rearranging the occupancy of job classifications, by freezing or giving lesser wage increases to the male target group in order to have a lower target by the time you get to making the wage adjustment.

We find it is hard to predict accurately all the ways employers will attempt to avoid the act. I do not think it is sinister or paranoid to think that will not occur with some employers. We think we should have in the bill a





section similar to that in the Employment Standards Act now and similar, for example, to that is in the Income Tax Act, where the minister can collapse a tax scheme that, although in all its individual parts it is legal, is in essence to avoid the payment of tax. Similarly, the referee in employment standards can collapse a scheme where the purpose of the scheme is to defeat the purpose of the act.

We are not talking about employer moves that are made for legitimate business purposes, but we think there should be some kind of broad statement and power given to the Pay Equity Commission to deal with this kind of unfair labour practice of employers around pay equity. As it presently stands, there is nothing like that in the bill. Once you have developed a commission that has the expertise, it will be able to identify and see the types of employer mechanisms that are legitimate and those that are not.

Mr. Baetz: I also want to thank you very much for your comprehensive report. Obviously, a lot of background homework has been done on it. You have provided us with statistics, some of which we did not have before. I must say you also enlightened this amateur, finally, as to what it was I sensed was bothering some of the unions about their future role in this whole matter. You have done them a good turn and you have certainly done me one by being specific about that.

You referred to a study--I do not think it was Hay; it was the other firm--that discovered that the larger the firm, the larger the gender-based wage gap. I think that is the way you put it. I must admit I was very surprised to hear you say that. I have not read that study so I would like to have you expand on it a little more.

Last night we had General Motors, one of the biggies in this province, in here. I cannot speak for the rest of the members, but I was very much impressed with its statements indicating that, in fact, there was no great problem at General Motors. I guess I also concluded, maybe improperly, that all the other big ones were just about as squeaky clean as GM, that the real villains were the middle-sized employers and that maybe the worst were the very small ones.

Mr. Charlton: Those guys have been fooling you for years.

Mr. Baetz: He said that; I did not say that.

Ms. Spink: The study I was referring to was the one done by Blackhurst van Beinum Associates. It was a study of firms with fewer than 100 employees. What they did was divide the groups into four or five categories of firms with fewer than 100 employees. What they found was that in firms with between zero and five employees there was less of a wage gap than in firms with between 80 and 100 employees.

If you look closely at the first table in the report--it was one that the government released last week--one of the reasons, I am sorry to say, that the gap seems to be smaller in smaller firms is that they pay less in the first place. As you approach the minimum wage level, there is less likelihood for a large gap. But they did show that there is a gap and, as the number of employees approaches 100, the extent of the gap increases.

I do not have data on the study, because the study did not cover firms the size of General Motors. I am sorry I cannot enlighten you about that.





Mr. Baetz: So you are saying it was really the bigger of the smaller.

Ms. Spink: The bigger of the smaller firms. That is right.

Mr. Baetz: So even though Mr. Charlton does not believe it, maybe GM is squeaky clean. Maybe there is no great problem there.

Ms. Spink: I would not want to be seen as a defender of GM.

Mr. Baetz: Anyway, thank you very much for clarifying that.

Mr. Chairman, I would like to say for the record that reference was made to Mr. Somerville and the National Citizens' Coalition. Again, it was implied that Mr. Somerville and his coalition were speaking for business, or at least there was a very close association. For the record, when Mr. Somerville appeared before us and made statements that, I guess, to quite a few of us around this committee seemed rather outlandish in terms of simply saying there is no problem and there is no injustice, period, I explicitly asked him, "Who are--

Ms. Spink: I was here.

Mr. Baetz: Yes, you were here.

Ms. Spink: It was wonderful. You all demolished him.

Mr. Baetz: But the point was that he, himself, said that he was not speaking for business and he would not want to be its mouthpiece. I frankly think that maybe that point ought to be made, because, sure, there may be a general business bias in all of this--there probably is--but we have heard from quite a few businesses and delegations here and they are prepared to say, "Yes, there is a problem." How to solve it is something else.

Ms. Spink: It is a problem this big that (inaudible).

Mr. Baetz: I do not need to defend business; it can speak for itself. I just think that we should not equate the NCC totally with--

Ms. Spink: No, and I thought I made that clear at the beginning. It is clear that the NCC does not speak for business, but the point I wanted to make was that some of the better, the more intelligent presentations that you have had from business in fact carried with them the same assumptions as Mr. Somerville. It is a difference in style.

Mr. Baetz: Finally, Mr. Chairman, I--

Mr. Chairman: Mr. Baetz, you have used up your time in your defence of--

Mr. Baetz: Can I ask a final question?

Mr. Chairman: No, you cannot, as a matter of fact. Mr. Stevenson is on next. I will rotate back to you if there is more time. After your eloquent explanation of the NCC, you used up all of your time. I will have to move on to your colleague.

Mr. Stevenson: You used the statements of the 36 per cent and 22 per cent--or 34 per cent and 22 per cent; it does not matter, the mid-30s and



20s--discounting of women's paychecks. To what extent will this bill close that gap? Do you have any figures on that?

Ms. Spink: I think that it depends on whose amendments are in it by the time it is finished as to what it will extend. But as I understand it, the government figures were initially 15 per cent to 20 per cent.

Mr. Stevenson: Do you accept those figures?

Ms. Spink: I have not done any detailed analysis of that. That would be in relation only to the people who were covered.

Mr. Stevenson: Yes, so I understand. I understand why you would like to shorten the time to get the payroll adjustments made. I wonder if you have done any work to look at companies--and I am thinking particularly of the ones I am most familiar with, which are manufacturing companies that make components of a bigger gadget.

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Certainly there is one plant I am very familiar with, where I know workers and management quite well. In the plant there are just over 100 employees. Frankly, two large companies come to them and say basically, "We will buy these widgets from you, if you can produce them for that price, and if you cannot, we will get them somewhere else." They certainly are available somewhere else. That plant is working very tightly right now. I think the employees are relatively happy with what they are making, and labour-management relations have been excellent. I think the employees and management realize that the company is tight and that there is not much room to manoeuvre.

They think they are paying fairly. Really the only question comes is whether there is a problem with the office staff. They think they are okay. I think the office staff are relatively happy. But the company is over the 100 people and will have to come up with a plan. If indeed there is trouble, and they have to make adjustments, it is my concern that this plant and others like it could be into a problem if forced to make a quick adjustment. I know for a fact that there is not a lot of money in that company to be passed around. The easiest thing is to reduce pay increases across the board to correct for whatever problems exist. If it does not come that way, it is going to come out of money that might have been used for modernizing equipment and so on. Both employees and management are concerned about it.

Ms. Cornish: Let me deal with that this way. I understand it is a unionized work force?

Mr. Stevenson: Yes.

Ms. Cornish: Essentially, although you indicate to me that the employees are happy, the unionized representatives you have heard from--if you have heard from the Ontario Federation of Labour, which likely includes the union you are talking about--are in fact saying that those wage adjustments have to be made. In fact, the union in that plant is in favour of proactive plans over a short time, so I do not think it fair to say those employees are not in favour of it and are happy with the situation as it is.

The other thing you have to consider is that this company has in fact become adjusted, if there is a pay problem in it. You are thinking there may not be one, or that there may only be one with the office, but if there is a





pay problem, over the years they have become adjusted to having a situation where, in essence, they have been in a better position because their employees have been paid less:

In Ontario, we have had since 1983, I think, a unanimous resolution of the House saying that equal pay for work of equal value is coming. There has been plenty of time to adjust to it. We are saying that your employer has another two years before he has to make any adjustments. All right? We are talking two years down the road. We are not saying to that employer, "Go out there today and make all the adjustments," although we would like employers to do it. I think smart employers will do it, because if there is a problem, you can be assured that the workers are not that happy about it and that employers have a far more productive work force when the employees are being paid fairly. It really ultimately comes down to a choice between employee and employer interests, as do many labour relations matters.

We live in a society where, just as we have strong views about medicine and the Ontario health insurance plan, we believe the government should legislate. Studies have shown that people think the government should legislate in this area as well. If we have decided we are going to end it, how long do we take? We are saying, "We think this is the reasonable compromise of the time frame that is necessary to do it." To say no, we must give what potentially we have calculated as 18 to 20 years for some people to get their final wage adjustments just cannot be acceptable. In other situations, if there were a finding--and there may well be some of this problem--a systematic undervaluation of work, for example, on the basis of race, would we find people saying it can take 20 years to rectify it?

It is just one of those basic standards that the good corporate citizen has to live by. It is like when the oil price goes up. You live and that is a fixed thing. What seems to be different with employees' wages is that they are more flexible. We are saying that in this area they are not flexible. They are flexible to the extent only that you are already being given a period of time to adjust.

Mr. Stevenson: I certainly accept the concept of your answer. Basically I agree with it. Unfortunately, I think in some cases it is a lot easier to say than to carry out. I really think there will be some companies that are going to be hard-pressed, because of the nature of their businesses, to do it without hurting. I am sure they will get it done. I do not doubt that they will. The bill is here and it is going to pass in some form or other and it will happen. To quicken it as you suggest--I think there are some sectors that could really cause some--

Ms. Cornish: It is true in any social policy that there may be some particular people it may affect more. I think it is a matter of who is hurt the most, and we are asking you to opt on our side rather than on their side at this point.

Mr. Chairman: I will have to break in at this point; I am sorry. I appreciate the submissions you have made. With some reluctance, I have to cut it off at this point. Thank you for all the work you have done, your brief and the comments that you have assisted us with, as well as responding to our questions. We appreciate it a great deal. Thank you very much.

I am going to give the committee a quick five-minute break.





The committee recessed at 3:57 p.m.

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Mr. Chairman: Members of the committee I believe we should get under way with the 4 o'clock delegation. If the Council of Ontario Construction Associations would come to the front, I would like to welcome you on behalf of the members of the committee. If committee members would take their places as soon as possible, it would be appreciated.

Perhaps just by way of informing the construction association of our usual method of handling the agenda, we would ask you to introduce yourselves, make your presentation in whatever time that takes and also it would be appreciated if you could leave some time, 15 or 20 minutes, whatever is convenient at the end of your presentation for any questions there might be on behalf of the members of the committee.

I believe we are ready to get under way if I could have you introduce yourselves first and then we will carry on from there.

#### COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

Mr. Frame: Thank you, Mr. Chairman. We are COCA, the Council of Ontario Construction Associations. Directly to my far right is John Spratt, who is secretary-treasurer of Spratt Sand and Gravel and chairman of COCA. Beside me on my right is Sandi Humphrey, who is assistant executive director of the Ontario General Contractors Association and pay equity chairman of COCA. I am David Frame, COCA's executive vice-president.

Mr. Spratt: Mr. Chairman and members of the committee, I would like to give you a quick brief overview of what COCA is all about and then I will ask Sandi Humphrey to make the body of our presentation.

The Council of Ontario Construction Associations represents 43 trade and local mixed construction associations across Ontario. In total, our associations account for some 7,000 contractors, suppliers and related manufacturers in the construction industry. COCA's specific mandate is to represent the industry on matters of provincial legislation and regulations.

From the time of the intention of the government to proceed with private sector pay equity as announced, COCA has been very concerned with its application to business in general and construction in particular. We have laid out our concerns in some detail to the consultative panel on pay equity in June 1986, as well as in private meetings with the Honourable Ian Scott, and in a series of meetings with officials from the Ontario Women's Directorate.

The concerns that COCA will express to you today, have two basic themes. The first is our concern for the effect of the legislation on the running of business and the business climate in general in Ontario. The second is that we have taken up the challenge to not just complain about the legislation, but to do an actual study of a somewhat typical contractor in order to either confirm or deny the preconceived problems with the legislation.

COCA fully recognizes that an effort has been made by the drafters of this bill to cushion some of the effects the legislation will have on business and to restrict some of the inequity. This is important because business still must be convinced that the legislation has been designed to work within the



private sector environment. In order to do this, it is absolutely mandatory that a few aspects of the bill be either kept or strengthened and they include:

1. The exemption of companies with fewer than 10 employees;
2. The timetable as presented in the bill; and
3. The one per cent of payroll limit on annual increases due to pay equity.

These three particular aspects of the bill clearly recognize that small employers would find it difficult, if not impossible, to implement the legislation in a fair manner. Timetabling is set to let the smallest businesses learn from the earlier experience of larger and middle-sized operations. The cap on annual increases in wages due to pay equity guarantees that there will be no sudden, dramatic escalation of payroll costs, only a series of adjustments over time.

We are quite aware that advocates of a more all-encompassing pay equity system have asked you to remove some of these limitations. This would be a mistake. Not only would it greatly reduce a business's ability to adapt its situation to pay equity, but also it would destroy any opportunity you now have to develop some goodwill on the issue.

Now I will ask Sandi to present the report.

Ms. Humphrey: Attached to the COCA brief which has been distributed to you is a report by Sibson and Co., as presented to COCA this week. This is an in-depth study which has done a full assessment of the impact of this legislation as it now stands on a typical construction company.

It represents a detailed audit of five jobs in this business most likely to be affected by the legislation. They were evaluated using a gender-bias-free method of job evaluation, based on the four compensable factors of skill, effort, responsibility and working conditions. The positions were assessed for the effect of salary levels and administration practices, and appropriate recommendations and conclusions were drawn.

The findings of the report, at the very least, must be called alarming. It clearly documents why construction's large body of skilled and semi-skilled trades workers and labour should not be compared for pay equity purposes with construction office workers, either male or female.

The study assesses five positions in a medium-sized general contractor's operation. These include the male office position of estimator, the female office position of accountant-office manager, the female office position of receptionist-typist, the male construction site position of carpenter and the male construction site position of labourer.

Through table 1, which you will see in the Sibson report between pages 7 and 8, the study clearly shows the office workers' and site tradesmen's employment are based on totally different employment arrangements with the employer.

Construction trades in Ontario, both unionized and nonunionized, are paid very well. This is a reflection of the temporary nature of the job, the seasonal nature of the industry, exposure to the elements, the high safety risk and the strength of the provincially based trade negotiations.





Furthermore, the unionized contractor has no say in the rates he pays his unionized trades. They are determined by province-wide negotiations on a regular basis.

This is in sharp contrast to the employment of his office staff, both male and female. They are employed on an ongoing basis, and their compensation is negotiated between the employer and the employee and reflects the rates that are set in the open market.

Despite these variables, which make it very hard to compare construction site and construction office employees, pay equity as presented in Bill 154 would compare the receptionist-typist with the labourer and the carpenter with the accountant-office manager. These comparisons are illustrated in table 2, located between pages 8 and 9 of the Sibson report.

The required adjustments would see the accountant-office manager's pay adjusted by \$7,309, a 25 per cent increase. The receptionist-typist would see her current salary of \$19,000 balloon to \$31,640, an amazing increase of \$12,640 or 66 per cent.

Clearly, these new pay levels, as proposed under Bill 154, do not reflect a fair compensation level for the receptionist-typist or the accountant-office manager. Pay-equity-adjusted pay levels in other industries with similar receptionist-typist and accountant-office manager's positions would yield much smaller increases.

Table 3, which is found in your report between pages 11 and 12, compares the female-dominated position of receptionist-typist in the construction company with a person in a similar line of work compared to an engineering company junior draftsman or in general industry to a stockroom clerk. In these comparisons, the receptionist-typist would receive in the neighbourhood of \$22,000 to \$25,000.

This bill represents major inequities for the construction sector. It is COCA's belief that many of the inequities I have just discussed with you would be eliminated or reduced with one simple amendment. An amendment under the definition of establishment could read, "The construction site shall not be considered to be part of an employer's establishment." Under these circumstances, pay equity would still be applied in the construction office, but comparisons would not be made to those working on a construction job site.

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This move would be largely supported by the recently released Blackhurst van Beinum and Associates report for the Ontario women's directorate called Achieving Pay Equity in Small Business in Ontario. Its recommendation went further, proposing an across-the-board exemption for construction. It reads:

"Our data indicate that the wage gap within the construction industry is small across the segment, regardless of company size. It seems apparent that the issue of job ghettos is critical in this segment. For this reason, we recommend the construction industry be exempt from pay equity legislation and be required to develop an active employment equity program to address this major issue."

In fact, COCA has been very active with the Canadian Construction Association in encouraging affirmative action through the construction industry's positive employment practices program.





The Sibson report, on pages 9, 10 and 11, highlights six issues in the interpretation of the legislation that should be considered as five issues in the implementation of the legislation. I will highlight a few of them.

The study illustrates the bill's inadequacies in its definition of female dominated. Smaller companies, such as the one studied, tend to have single incumbent positions where gender domination of the position is dependent upon the particular incumbent at the time of the review. Hiring practice would, therefore, make the same position either subject to pay equity legislation and upward salary adjustments or exempt.

In the case of this study, it has made the position of accountant-office manager subject to the legislation. However, in most construction companies, this position would be male and exempt from the legislation. COCA firmly believes that the legislation needs to establish a higher level of incumbency for gender domination before pay equity legislation takes effect. An incumbency factor of two persons would solve this particular problem, but a group of five would clearly establish the group's gender characteristics.

In the case of our study company, it will be penalized over \$7,000 a year for being farsighted enough to hire a woman in a position that normally would be filled by a man. The promotion of women in construction is a priority for COCA, recognizing that the industry is overly male dominated. Without a doubt, the legislation, as stated, would totally destroy efforts to promote women in the industry.

Employment equity principals will find themselves at a disadvantage of paying financially for their hiring practices. The study clearly shows that internal inequities would be created by adjusting female positions but not the males. On the basis of this study, the accountant-office manager would be earning the same as the estimator, whose position was evaluated significantly higher in the study. In order to restore complete internal equity, all salaries throughout the organization would have to be reviewed and adjusted accordingly.

All employers with small staffs are at a great disadvantage compared with those with larger staffs who would be able to reduce their financial exposure and compensation by having a greater range of positions at varying pay levels for comparison purposes. Many smaller operations do not have that luxury. For example, if there had been a male clerical or computer operator position in this office, that might be evaluated as comparable. Their pay levels would be substantially lower than the skilled trades and corresponding required salary adjustments to the female-dominated positions would be significantly reduced.

Clearly, unionized companies that must compare their unionized labour force with nonunion office workers are at a great disadvantage. Not only the working conditions but also, first and foremost, the bargaining strength of unionized labour create great discrepancies in comparing union and nonunion. Most of our concerns with Bill 154 are presented and illustrated in the Sibson report.

One more strong concern must be mentioned, that is, the creation of the Pay Equity Commission with a new bureaucratic structure and very strong police-type powers. COCA believes this would be quite unnecessary when an existing act, the Employment Standards Act, is operating and governing similar laws. It is clearly preferable to use the provisions under the Employment Standards Act to monitor and police the legislation rather than to develop a



separate and parallel bureaucracy. Past experience has shown us that these bureaucracies have few checks on their size and their growth.

The nature of the Pay Equity Commission has also caused us much concern. The power of the complainant to remain anonymous seems to assume a great degree of guilt on the part of the employer. Similarly, no provisions have been made for employers to be reimbursed for costs that would possibly be very expensive. We believe you should change Bill 154 to drop the establishment of the Pay Equity Commission and instead enact the provisions of the Employment Standards Act. The legislation should also direct that the employer's costs of defending his plan should be paid by the agency if the case is vindicated.

We would like to thank the members of the committee for listening to our presentation so patiently. We hope we have some time left for questions.

Mr. Chairman: Thank you very much. You concluded a little quicker than I thought you were going to do. We appreciate it.

Ms. Humphrey: We are full of surprises.

Mr. Chairman: I appreciate the submissions you have made before us. Do members of your delegation want to make any further comment before we get into questions? If not, I will turn to the committee and see whether there are any questions they wish to raise with you arising out of the comments you have made.

Ms. Fish: First, let me thank you very much for the brief. I was trying to go into the Sibson and Co. report as you directed as you went through. Maybe you could just take a moment to tell me whether the Sibson people, in the course of doing their evaluations between the construction site jobs and those within the office, dealt with questions of seasonal employment.

Ms. Humphrey: No, they do not.

Mr. Frame: No. The evaluation was done in February. It just dealt with that point in time when it was done in February.

Ms. Fish: Did it assume full-time, year-round employment in both cases?

Ms. Humphrey: Yes, it did. The figures there indicate that.

Ms. Fish: What would have happened if the evaluation had been done on a comparable basis, considering the seasonal nature of the job site?

Mr. Frame: It would not have made a difference. In the summer months, this particular contractor could easily expand his staff of 29. He could easily reach 60 or 80 persons when he hires tradesmen to come on and work. This would not be an expansion of his office; it would be an expansion of the trades he hires on to do whatever job he is doing. Because there are comparisons with the trades already existing, it would not affect the evaluation as you see it there.

Ms. Fish: Then maybe you can help me. I may have misunderstood. I thought the trades that were being compared to the receptionist-typist were the trades such as the seasonal employment and were found only on job sites.

Mr. Frame: Many of them are affected by seasonal employment. During





the summer, this particular contractor would have, on average, a much bigger staff of tradesmen.

Mr. Stevenson: But he does have some year-round?

Mr. Frame: Yes.

Ms. Fish: Yes, that is what I am trying to get at. This was a comparison with year-round trades.

Ms. Humphrey: Yes, although he will add more when he gets busier. I think it is the same type of individual, but some of them are year-round and some of them are not.

Mr. Frame: I might add that the trades are paid the same whether they are working with a contractor year-round or whether they come on to do a job for two days.

Ms. Fish: But in this case, it was a comparison of year-round employment with year-round employment?

Ms. Humphrey: Yes.

Mr. Frame: That is right, but a comparison with temporary employment would not have changed it at all.

Ms. Fish: Okay.

Mr. Charlton: As a supplementary to that question, and we can go to the parliamentary assistant, you made the point in your presentation that when the construction trades negotiate, they negotiate on the basis that the majority of their members are likely not going to be working for an entire year. In other words, the hourly rate they get is escalated to reflect the fact that there are going to be three or four months of the year when the majority of the members of that union are not working.

Ms. Humphrey: That is correct.

Mr. Charlton: Would that not be part of the case that is made in terms of the commission itself?

Mr. Ward: It is very difficult to respond and make all the assumptions that may have been made in the case study.

Mr. Charlton: I am not talking about this case study; I am talking about the kind of plan the commission would be looking at in terms of determining pay equity in a case where you are comparing somebody in a carpenter's job or a labourer's job, where the vast majority of carpenters and labourers are working only eight or nine months of the year, to somebody who is a clerk-typist, who is likely working for the whole year.

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Mr. Ward: I see your point.

Mr. Charlton: That is part of the case you would make to the commission, is it not?

Mr. Ward: That is correct.





Mr. Charlton: So the study you have done has not taken into account that you have that ability in making your case to the commission, but they are not comparable for that reason. You cannot take what a construction worker made in 37 weeks and extrapolate it out to 52 because for the rest of the year the construction worker only got unemployment insurance at the maximum rate but did not get the same rate for the rest of the year.

Mr. Frame: I severely doubt if that argument would hold any water. The comparisons were made here from a core group of tradesmen, carpenters and, in this case, labourers who were employed by this employer for 50 or 52 weeks of the year.

Mr. Charlton: I understand that. Again, the case is, how did their wage get to be that way? They are the lucky exceptions who get to work year-round. What I am saying is that they are not the norm in terms of carpenters and labourers.

If you are going to compare to carpenters and labourers, you are going to have to compare to all of them who work for that construction firm in a year, not just to one of them. The other ones are going to have their 37.5 weeks at full rate, and for the rest of the year at the unemployment insurance rate, which is going to substantially reduce what the average labourer and carpenter earns. Is that right?

Ms. Humphrey: Our concern is, and the reason we are presenting this right now, is that with Bill 154 we do not see anything that prevents that comparison from being made and that receptionist-typist salary--

Mr. Charlton: Because you are not comparing individual people; you are comparing classes of people. We are doing job evaluations here, not comparing individual employees.

Mr. Frame: Mr. Charlton, when you raise the point that it would be preferable for the legislation to address something like that rather than give all the contractors involved a right to fight their own cases individually in front of the board, what I seem to hear is that you say the contractor can come and justify his plan by not equating, in this case, an office worker with a site worker. He can go and fight his own case in front of the board rather than have the legislation.

Mr. Charlton: No, depending on the size of the contractor. Some contractors are going to have to submit a plan, presumably in consultation with their employees. Some contractors are not going to be submitting plans but there could be a complaint. That is true. But for all intents and purposes the large contractors who are submitting plans are going to have answered this question for you before the small contractor ever gets there.

Mr. Frame: We are into a large grey area here. COCA met with the women's directorate and Jane Marlatt. They are aware of the concerns we were talking about. The report has just come out, and it is much more specific in the general terms that we have talked about. I do not remember any possible solutions that (inaudible) the way the bill is drafted.

Mr. Charlton: For example, I noticed in the study that although you are saying they compared on whole years worked, that is not the case at all. What they have done in two of the cases is take a person who has worked 36.5 weeks, another person who worked 36.5 weeks and a person who worked 37.5 weeks, extrapolated them out to a full year's salary and then did the



adjustment. On that basis they did not even work a full year. They did not get paid the dollars you said they got paid.

Mr. Frame: I do not follow that comparison.

Mr. Charlton: You have done what I said you have done. You took three people who did not work a full year and you extrapolated their wages out as if they did work a full year, then you did the comparison. That is how you got the clerk-typist-receptionist up to \$31,000. But the three people did not work a full year.

Ms. Humphrey: If I may clarify that, I believe the figures you are referring to refer to 36.5 hours per week and not 36.5 for a full year.

Mr. Spratt: The receptionist-typist is down for 36.5 hours a week as well.

Mr. Frame: I am sorry. I realize you are under a handicap having a 20-page brief thrown in front of you and being expected to question on it.

Mr. Lupusella: He is going to apologize in a minute.

Mr. Charlton: That is not what the next column says, though.

Ms. Fish: What page are you on?

Interjection: Table 1.

Ms. Humphrey: Just before page 8; opposite page 8.

Mr. Charlton: I have a carpenter and a labourer here who were paid only for the time they worked and it has been extrapolated out to an annualized salary.

Ms. Humphrey: The \$37,304 and the \$34,674 are figures for the carpenter and labourer if those individuals worked 52 weeks a year.

Mr. Charlton: That is right but he did not work 52 weeks a year.

Ms. Humphrey: Yes, he did.

Mr. Charlton: That is not what the next column says. What has been done in this study is they have taken two people who did not work a full year and annualized the salaries.

Mr. Spratt: Those two positions are paid on an hourly rate.

Mr. Charlton: That is right; I understand that.

Mr. Spratt: I understand your reasoning.

Mr. Charlton: We have a column that says "Pay for Time." We have three full-time people compared to people who did not work a full year. You have extrapolated their salaries out and annualized them. It is not a fair comparison.





Mr. Frame: If it is not annualized, how do you expect the employer to do it?

Mr. Charlton: The carpenter does not make that much. For the time he did not work, he got unemployment insurance rates.

Mr. Frame: I am sorry. They did not.

Mr. Charlton: That is not what it says here. I am reading what is right here in black and white. I have an annualized rate and two people who did not work the whole year. How did you come up with the annualized rate? You took the hourly rate for the hours per week they worked and you multiplied it out to 52 weeks, but they never made that much because they did not work the full year. You have a comparison that is not going to work.

Ms. Humphrey: In this study, those individuals did work 52 weeks a year and those are the amounts of money.

Mr. Charlton: Why does it say this? It does not say they worked full-time. You have a column here that says you have three full-time people and two who are not indicated as full-time people.

Ms. Humphrey: The compensation base is what that means.

Mr. Charlton: They did not work it.

Mr. Stevenson: Are you not saying here that there are, in those two columns, people who may or may not have worked the full year, and for that reason the word "full-time" is not put in there, but in the case of the specific comparison here, people who did work full-time were used in the comparison?

Ms. Humphrey: Yes.

Mr. Stevenson: In actual fact, to try to make the thing as realistic as possible, the people who filled the positions being compared were in fact full-time people right across the board.

Ms. Humphrey: That is correct.

Mr. Charlton: That still does not deal with the point I raised, which is that you are not comparing employees with employees in a job evaluation study; you are comparing a class of jobs with another class of jobs. This means that when you compare carpenters to anything else, you cannot just look at the carpenters who worked all year. You look at the class of job.

Mr. Stevenson: I think everybody here realizes that. I think this study was done to show some of the problems associated with the bill and nothing particularly more than that.

Mr. Charlton: If you are comparing people with people, you are not dealing with what the legislation says.

Mr. Stevenson: It is a nice try anyway.

Mr. Chairman: Are those the end of your supplementaries?





Mr. Charlton: Yes, all of them.

Ms. Fish: Good. Can I go back?

Mr. Chairman: Ms. Fish still has the floor. I allowed Mr. Charlton considerable latitude because I could see he was trying to clarify a very sticky point. I hope you will remember that when I cut you off next time.

Ms. Fish: Will the parliamentary assistant consider permitting staff to answer the technical question of whether the bill as written will require a comparison based on a full-time work assumption, as indicated in this report, or whether it will permit a discounted assumption.

Mr. Ward: I will be happy to let the staff answer that. I am not sure it is a technical question.

Mr. Fish: A very similar technical question was asked by Mr. Charlton. You essentially said it was very difficult and declined to answer, so I thought maybe staff would be able to give us greater clarity on whether it could be done, and if not, why not.

1640

Ms. Marlatt: One of the ways you might get around these problems is to look at an hourly rate. I think that if you translated the receptionist-typist into an hourly rate and did the labourer-carpenter or whatever into an hourly rate, that would have the same effect as you have from the annualized. I think that in this study they have chosen to annualize as if they both worked full-time. Alternatively, you might have looked at them both and compared on an hourly rate but I think you would still have the same measure of change.

Mr. Charlton: My point on that question in terms of the kind of submission that should be made is simply that if you have a company that over the course of the year has an average of 15 carpenters, most of whom do not work for the full year and who have negotiated a higher rate of pay because their work is seasonal, you have to take into account actual earnings to some extent. How much do they actually earn in a year on average as carpenters in that firm? That is the kind of figure you look at when comparing a full-time person.

Ms. Humphrey: In our opinion the current legislation does not allow us to do that. The current legislation forces us to do this.

Ms. Fish: Good, and could we stop there and ask: Does the current legislation permit that to happen or does it require that each job be taken either hourly to hourly or annualized to annualized? Does the current legislation permit an evaluation to recognize a different engine driving the hourly or the annualized?

Ms. Marlatt: I think the legislation would probably require an annualized to annualized or an hourly to hourly.

Ms. Fish: I take it then you agree with the deputants.

Ms. Marlatt: They have probably adjusted the salaries correctly.



They valued the jobs equally; then, looking quickly at the report, I suspect the adjustment they are showing is correct.

Ms. Fish: Therefore, the contention of the deputants that the way the legislation is currently drawn would narrow options in terms of the comparison and land up with that kind of result--

Ms. Marlatt: I believe so.

Mr. Charlton: Can you get us a clear interpretation of that?

Ms. Marlatt: We can try.

Mr. Ward: Can I add to that? I really think the deputants did make their case that their comparison was a valid one in terms of either the annualization or an hourly to hourly. The difficulty in assessing your example--I cannot argue either on behalf of or against or make a presentation for or against as it may be put in front of a review officer without knowing. Perhaps you can elaborate further in terms of how the assignments were made on the basis of skill, effort, responsibility and working conditions, because working conditions are a factor as well.

Ms. Humphrey: It was all included in that evaluation. They were all looked at.

Mr. Ward: I guess what remains is for you to make those value assignments and defend those value assignments as you make them. I just cannot argue one side of your case or the other. If that is the conclusion of your comparison, then that is the conclusion.

Ms. Humphrey: To summarize our concern, we have had our consultants come up with figures relative to receptionists, secretaries and different types of operations outside of construction where the secretary or reeceptionist-typist's salary would maybe be increased 25 per cent, nothing that comes close to what our industry is looking at. There is the inequity, and that is the inequity that we are concerned with and that we feel should be addressed to make the whole issue fair across the board for all employers.

Mr. Ward: Again, I am trying to identify what precisely your concern is. Is your concern whether you have made an equal-value comparison, or is your concern that having made an equal-value comparison it costs too much money?

Mr. Frame: I believe our concern is that we are not convinced this is an equal-value comparison. We brought Sibson in. We said, "Take the legislation and apply the legislation is exactly as it stands right now to this contractor, and tell us what it means for that contractor."

Mr. Ward: If I could go farther, and I do not want to engage in a two-way debate here, but if your concern is that you have not made an equal-value comparison, then I think it would be far more helpful to the committee if you could elaborate and identify why you do not think you have made an equal-comparison beyond just the cost factor.

Ms. Fish: I think that has been pretty clearly identified already. What the deputants have said is that they believe that in applying it to their industry, there is a flaw in the bill that fails to recognize precisely what Mr. Charlton indicated was clearly the engine driving the hourly wage for a





component of workers that would be included in the evaluation, and that was the subject of the questioning of you and the staff. I think the more appropriate question would be directed to you as the government's representative. Does the government agree that there is a problem here, and if so, does the government intend to bring forward an amendment in this area?

Mr. Polsinelli: Can I ask a question?

Mr. Chairman: We have not had a response to that one.

Mr. Polsinelli: As a supplementary, is this your full consultant's report?

Mr. Frame: Yes.

Mr. Polsinelli: There are no other tables, nothing else that was presented other than this?

Ms. Humphrey: No.

Mr. Chairman: All right. Can we go back to the parliamentary assistant in connection with--

Mr. Ward: I am not in a position to agree whether or not we have a problem here without an analysis of the comparison that has been made. I would be content to look at it. If it is an equal-value to equal-value comparison, then there is no problem other than one associated with cost.

Ms. Caplan: You may find that in your industry, the job description of your office manager-accountant individual or your estimator, the carpenter and the typist-receptionist, perhaps the job descriptions and responsibilities are different than in other industries and that is why you end up with this equal-value comparison. You have asked for that to be looked at, but it may well be different in your industry.

Ms. Humphrey: Our concern is that the legislation does not allow us to account for seasonality in so far as the trade sites and salaries are concerned, and it does not allow us to account for the collective-bargaining power of the union, which ties in with the seasonality and their high rate of pay.

Ms. Caplan: It would seem to me that under the employment and working conditions it may well deal with seasonality, but I would ask for that to be clarified and I think that will be done.

Mr. Chairman: Rather than debate it at some length, there are other areas of the presentation I think we should get into. Undoubtedly, this is one of the serious ones in terms of the construction association's comments to us. If this would solve the dilemma for the committee, could we take the concern under advisement and look at the seasonality question as it may relate to proposed amendments that will come up when we get into clause-by-clause? We are not going to forget about it. I think your concern is a valid one and you have made your point. Without getting a clarification, for us to--do you want a supplementary on this one?

Mr. Polsinelli: Yes, Mr. Chairman.

Mr. Chairman: Without getting a specific clarification, which we do





not appear to be able to do at this point, if we leave it that way we can resurrect the whole issue at the appropriate time.

Mr. Polsinelli: Mr. Chairman, I agree with your comment. It is something we should not forget. However, in briefly looking through the report, it seems as if there is something missing. It seems you are evaluating at a certain point. It says this is the rating of the positions but has not justified them. There does not seem to be any type of documentation to show the job evaluation scheme it used. It explains it, but I do not see any ratings. I do not see what weight is put on skill, what weight is put on effort, what weight is put on responsibility, what weight is put on working conditions and what other factors used in determining this whole scheme. What I would like to see is that type of evidence. This is a report telling you what the conclusions are, but it does not substantiate the conclusions.

Mr. Frame: The report you have in front of you was delivered to us directly from the consultant. We have passed it on to you bound as we received it from the consultant. I believe I could go back to the consultant, if you would like, and ask for an evaluation. It is a paired comparison where each job out of the five was paired and compared on all the factors that are listed earlier in the report. I will make sure that we get that to you.

1650

Mr. Chairman: Could you provide that to the clerk?

Mr. Frame: I will provide that to the clerk.

Mr. Charlton: Supplementary to that, it does not appear to me from my perusing of the two charts here that the value of benefits has been taken into account at all. It also appears that the office workers have substantially more benefits involved than the two construction trades people. Therefore, that is going to alter the numbers substantially in terms of the pay adjustment required. We would like to know whether the value of the benefits was taken into account in this comparison. If it was, what are those numbers?

Mr. Frame: I will see if I can make those available. I talked to the consultant about that and she commented that a full evaluation based on all the differences that existed in the comparison was not possible without a full audited statement done.

Ms. Humphrey: Our consultant has advised that there is really no clear definition of what defines compensation. That is why we did not know whether to give these other things weight.

Mr. Charlton: Perhaps the parliamentary assistant can comment on that.

Mr. Ward: Yes, benefits are included in the definition of compensation.

Mr. Frame: I have just been informed that the benefit rates here for the labourers include all benefits.

Mr. Charlton: That is right, but they do not for the salaried employees. In addition to their salary, on their behalf, you match their pension contributions and you cover 75 per cent of their medical, 50 per cent



of their dental and 100 per cent of their life. You are matching a four per cent contribution to the pension plan. You are paying for sick time. There are a substantial number of things in addition to salary that you are covering for the salaried employees. All the benefits for the trades people are included in their salary.

Mr. Frame: As I said before, I understand that because of the nature of the way the remuneration happens and the differences between the two, it would be a very difficult process to get into without a full audited statement.

Mr. Chairman: Mr. Ward, you had a question you wanted to raise.

Mr. Ward: One quick question: What compensation would you pay for a full-time carpenter employed year-round? Does that exist?

Ms. Humphrey: That is the figure you will find on that table opposite page 8.

Mr. Ward: So it is not the seasonal thing that we have had referred to then.

Ms. Humphrey: No, the figure that is on page 8 under annualized pay is based on 52 weeks of employment by the individual, be it carpenter or labourer.

Mr. Stevenson: At one point in your presentation, you mentioned the position of estimator would have been increased substantially as a result of this study or something like that. The estimator position was used as the base. Is that correct?

Ms. Humphrey: Nothing was used as a base. All were used collectively. Each was evaluated against every other. The ultimate results were that the estimator was deemed to be equal in value to the employer more so than everybody else. The estimator was at the top.

Mr. Charlton: He also did not change.

Ms. Humphrey: That is correct, but the concern is that if he were deemed to have been more equal in value to the employer than the others, the legislation is putting the accountant-office manager within \$200 a year of his salary where the evaluation proved that he was actually more valuable to the employer than the accounting-office manager. Is that not going to pose a problem?

Mr. Frame: The point made--

Mr. Charlton: Yes. But to go back, the problem is the accounting office manager got up that high by the comparison to a carpenter, and you have not properly done that comparison.

Mr. Frame: I believe we passed that. The person ranked number one out of the five comparisons here was the estimator. Pay equity, because it only deals with the female positions, brought the second-ranked person up to the same pay scale as the number-one-ranked male. In this case, they are equalling the pay rates of the estimator and the accounting and office manager.

Mr. Ward: The accounting and office manager's position is





traditionally filled by a female employee. Is that correct?

Mr. Frame: No, it is not. In construction, the tendency is definitely towards male employees in that position.

Mr. Ward: In making those comparisons, you have to have regard to historical incumbency as well.

Mr. Frame: As I understand the legislation, does not the historical incumbency work in reverse?

Mr. Ward: It works in both directions.

Mr. Frame: Does it?

Mr. Ward: Yes. It does not solve your problem.

Mr. Frame: No.

Mr. Stevenson: Whether or not the moves here are fair, and whether or not these numbers are right on the dollar, it is clear that some substantial changes will be required in the industry. Are you aware of, or can you speculate on other sectors where you believe this sort of problem may also come up, or do you think this is unique to the construction industry?

Ms. Humphrey: At this time, we are unaware of any other industry where this legislation will impact on the office clerical sector to that extent, but I do not want to say there are not any. I do not know. Some industry of which we are unaware at this time may have the same situation presented to it.

Mr. Frame: Frankly, I believe the same problem often exists in comparing nonunionized staff to a unionized shop. I understand other groups have talked to you about the same problem. We believe the difference here is that pay differences are so great. We do not know of any others with that type of difference, a range of 66 per cent in this case.

Mr. Chairman: Are there any further questions from members of the committee? There being none, I would like to thank the construction association. We will certainly look into the matters you have raised with us in terms of precise interpretation. If there is any additional information you feel compelled to get back to us, write to the clerk of the committee. There was the one item in particular on which you indicated you had some further information. We will still invite you to make known to us any other comments you feel will be of assistance. On behalf of the committee, let me thank you for the work you have done. Obviously it is quite extensive and very complete in many respects. We will use your documents during the course of our further discussions.

Before the next group comes in, I think we can take a very short break, if we discipline ourselves to get back here in about five minutes.

The committee recessed at 4:59 p.m.

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Mr. Chairman: Would members of the committee take their places please, so we can get on with the next delegation? There are some





conversations continuing, and we ask that they take place in the lobby, if that be your wish. Mr. Charlton, if you want to continue, would you do that in the outer lobby? I have to get on with the next delegation.

I am pleased to welcome the Coalition on Employment Equity for Persons with Disabilities. We thank you for coming before us. We have had a lengthy day of hearings, and we are closing with your submissions to the committee. Let me welcome you very warmly on behalf of the committee. I think more members will be back in a moment, but we should get under way as quickly as possible, so we can review your submissions to us.

I will ask, first, that you introduce yourselves. I would also appreciate it if you would leave some time for questions at the end of your comments to us. Whenever you are ready, you may proceed.

#### COALITION ON EMPLOYMENT EQUITY FOR PERSONS WITH DISABILITIES

Ms. Main: Good afternoon, Mr. Chairman and members of the committee. To my right is Kathy Glazier, a representative of the Multiple Sclerosis Society of Canada. I am Joyce Main, co-ordinator of the Blind Organization of Ontario with Self-help Tactics. To my left is Sue Clifford, a representative of Persons United for Self-Help in Ontario.

We are members of the Coalition on Employment Equity for Persons with Disabilities. We are a broad-based coalition which encompasses about 20 different member organizations. We have joined together because of the priority we place on the equal access to employment for people with disabilities.

Our submission also contains an appendix which lists the other member organizations that were unable to be represented today. We wish to express our strong support for pay equity and congratulate this government on introducing legislation which will advance women's equality in the work place. You will notice there are three disabled working women represented today.

As a group advocating on behalf of people with disabilities, we are particularly concerned about the needs of men and women with disabilities and the impact this legislation will have on employment of our group. As a group, we constitute about 10 per cent of the population, but we are vastly under-represented in the work force. From its buildings to its transportation systems, our society has not been designed with the needs of our population group in mind. As long as our needs are not taken into account, we will continue to be excluded from full participation and equality in society. That is why you see organizations like ours operating in today's society.

When it comes to employment, many people with disabilities are willing and able to work, but they have special needs which must be accommodated. In the vast majority of cases, this accommodation can be made cheaply and easily, with a little bit of originality and some practicality. For example, a hearing-impaired person whose job involves answering the telephone can have a small coil inserted into the telephone receiver to boost the sound and enable this person to perform that aspect of the job effectively. Accommodating the needs of the disabled in the work place only requires willingness, flexibility and creativity.

Ms. Clifford: I am going to be addressing the problems we find with pay equity. Anything that puts more structure or rigidity into the work place has the potential for making such accommodation more difficult.



Our coalition has identified some concerns about the way in which pay equity legislation may be implemented. Our first concern is that pay equity legislation will have the effect of adding more structure to any work places. Work places which do not at present have written job descriptions or job classes will have to introduce them in order to develop pay equity plans.

It is important to understand that flexibility in a job description is absolutely critical to handicapped employment. For example, a deaf typist is applying for a job that requires typing from copy and using a dictaphone. The needs of the typist could be accommodated by giving him or her all the copy typing and a hearing typist all the dicta-typing.

Another example would be of a person using a wheelchair who is applying for a job that requires some filing. Some of the files are out of reach from a wheelchair. The needs of the wheelchair user could be accommodated by assigning her or him another duty, such as photocopying and assigning the filing to another employee. For a third example, Joyce would like to add her personal experience.

Ms. Main: We thought it would be interesting to bring to the committee today the personal experience of one of our disabled employees--in this case, mine. I was applying for an administrative position with the Civil Service Commission and required someone to read print material for me. That was the only accommodation I would require in that job description.

I could have been accommodated by assigning these extra duties to my secretary, because in this position I was allowed a secretary. In other words, that was part of the job description and part of the classification. Obviously, that would have required shifting around the responsibility of other support staff. In another case, they might hire extra staff but still accommodate it within the budget and the job description. This would affect the job description of other staff in another job class, particularly when looking at the plans in the civil service.

Ms. Clifford: Therefore, a move to make a job description more specific, objective and fixed could adversely affect the chances of a person with a disability being hired, unless the need to retain flexibility is recognized and built into pay equity plans.

Pay equity legislation will also require employers to determine the value of the work done in a particular job class. In order to do this, work will be analysed for the amount of skill, effort and responsibility normally required and the working conditions under which it is normally performed. A person with a disability might be able to perform the essential duties of the job with accommodation but not some of the nonessential ones. We are concerned that an employer might remove this person from the job class by saying that she or he is performing a job whose overall value is lower than the other jobs in that class and thereby deprive that person of the benefits of pay equity.

The legislation does not impose any particular types of job comparisons, classification or evaluation systems on employers. Therefore, it is difficult to predict exactly the impact it might have on handicapped employment, as there are many types of systems that could be implemented. However, there is evidence to suggest that where rigid classification systems exist now it can be difficult to accommodate a handicapped person and that employers have to pay the handicapped employees less, even though they are performing the essential duties of the job.





The Ontario Human Rights Code now prohibits practices that, while unintended, have the effect of discriminating against a particular group. The code obligates employers to accommodate the needs of the disabled, providing that this does not cause undue hardship to the employer and providing the employee is able to perform the essential duties of the job.

In the light of the fact that a complaint to the Ontario Human Rights Commission takes three to five years to reach a hearing, and decisions are often made after the fact, we do not feel that the human rights complaints process is an adequate means of addressing our concerns. We feel prevention is far more effective. Employers would also have an interest in protecting themselves from being in violation of the code or the Charter of Rights.

Ms. Glazier will be addressing the proposed solutions that our coalition has.

Ms. Glazier: We believe that employers must be made aware of their responsibility to accommodate employees with disabilities before they develop their pay equity plans. We also believe that employers, unions and people with disabilities themselves must be educated to understand how such accommodation can be made.

Therefore, we are proposing that two things be done. The first is that the legislation be amended to take account of our concerns. The second is that the government provide resources for a large-scale public education program on reasonable accommodation in the work place targeting employers, unions and people with disabilities. We have carefully considered possible amendments to this legislation. We recognize that there is a concern about making amendments that might seem too confining or might unduly restrict negotiations between employers and unions.

We have some suggestions for amendments but we certainly would be prepared to discuss these further at a later time, to refine the language and come up with something that does the job but does not have any other unforeseen effects.

The amendments that we are suggesting are, in part I, under the definitions, the definition of "job class" could be amended to read:

"'job class' means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule"--and the part we would like to add--"whether or not accommodation of the needs of an individual employee has been made."

1720

The second amendment that we are suggesting is in part 1, section 4, the determination of value: "For the purposes of this act, the criterion to be applied in determining the value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed." We are proposing to add the same phrase, "whether or not accommodation of the needs of an individual employee has been made."

At the end of the bill, we would like to see a statement that reads like this: "Nothing in this act, or the pay equity plan which is developed, shall be deemed to relieve the employer of the responsibility to provide accommodation to the handicapped as set out in the Ontario Human Rights Code."





That is the proposal we have for you. We would certainly like to discuss it with you and to respond to any questions you have.

Mr. Chairman: Thank you very much. Are there any questions from members of the committee?

Mr. Charlton: You have raised a number of very interesting concerns. We have to think this through in terms of how we approach it. I want to get it clear in my head exactly how you see the problem evolving.

You have an employer who staffs a set job class. There are 10 of them normally. There is a vacancy, and the employer decides to accommodate a handicapped person in that vacancy, but the handicapped person cannot perform all of the duties of the job. He can only perform the bulk of them, and that is the basis on which the employer has taken him into the system. Is that correct? Am I understanding what the process is that you are concerned about?

Ms. Glazier: He or she should be able to perform the essential duties of the job with accommodation.

Mr. Charlton: Yes, but not necessarily all the duties. So what you are concerned about is, in this class of 10 employees who are all supposed to do the same work, you have one who is doing most of the essential duties but is not doing all the work. If the group were to get an upgrading because of the pay equity legislation, that one person might get left behind because the employer would say, "We cannot drag that person up to the comparable level because he or she is not doing all the duties anyway." Is that what you are getting at here?

Ms. Glazier: That might be one situation where, because of the determination of value as it is based on all the duties that people normally perform in that job class, a disabled person who may not be performing one and two might be seen to be performing in a job whose overall value is less than others in that class. Whether it is because others have been brought up in salary or whether at some time down the road the disabled person joins that class, there are those two possibilities.

Mr. Charlton: This is for the public accountant. Would that be allowed when you are looking at classes in jobs?

Mr. Ward: I would not think so, because the comparisons and assessments that are being made are not on the basis of individuals performing those jobs but, rather, on the job itself. If somebody is performing the essential duties of the job, then the comparison would be based on the value of the entire job. I do not foresee that. You have raised a valid point but I think it gets down--

Ms. Glazier: It does happen now. In some instances people with disabilities have been paid less for performing essentially the same job, performing the essential duties but not some of the nonessential ones. The employers would have to be aware that they cannot do that. The option that occurred to us is that an employer might choose to remove people from a job class and put them into a class on their own. I see that as a possibility.

Mr. Ward: Frankly, I do not think that would be permitted if the essential duties were the same. I do not see anybody being left aside.

Mr. Charlton: What she is saying now is, in the same way as you have



clerk 1, 2 and 3, the original intent might have been to bring the person in as a clerk 2. You never filled the position of clerk 1 because you never felt it was necessary but, all of a sudden, because of pay equity, you decide you are going to stick this person into clerk 1 instead of clerk 2. You certainly are going to be able to get away with that; in other words, create a new job class with less duties in it. You take the essential duties out of the job.

Mr. Ward: But I take it that what happens in the employment of persons with disabilities is that the work they do is essentially the same. Some specific duties may be left out. I do not believe you can create a job class on its own just by deleting some specific duties, yet leaving the job definition essentially the same.

Mr. Charlton: When was the last time you looked at a job description?

Mr. Ward: It is not that finite.

Mr. Charlton: I can show you piles of job descriptions, all very similar, where the clerk-typist-receptionist has a set of duties and qualifications. The next job up the ladder has only one additional duty and one job qualification added to it, but it is paid \$5,000 a year more in some cases.

Mr. Ward: I understand that, but I do not see how Bill 154 is impacting on that.

Mr. Charlton: You said that the one impact they suggested probably would not happen but that the other one they are suggesting could. The employer has taken on somebody who cannot do the full job description as it now is. They are doing the essential duties but not the full job description. The bill may, in fact, encourage the employer to create a new job class, a reduced job class, instead of letting the employees operate the way they have in the past. That is the second concern they are raising, and I think there is some potential for that to happen.

Ms. Glazier: The other thing we have become aware of in the process of looking into our concerns and making sure they really are valid, by speaking with human resources experts and people at the Ontario Human Rights Commission, is that some institutions have gone ahead and already developed pay equity plans. While this legislation asks only that the work done in a job class be evaluated, some organizations have gone ahead and developed pay equity plans based on individual jobs.

The question I have is, will those plans become illegal now or will they be deemed to have gone further than the legislation is actually asking? In those cases, I think the concern is very real.

Ms. Main: Our research shows that this does exist now, and obviously similar models will be introduced as time goes on.

Mr. Ward: All I can say is that as the legislation is written it is not that finite. It does not break out the way you suggest. I am not going to deny that this may be going on with some employers, but that is not the way the bill is written.

Ms. Glazier: The important thing is the outcome. We are here today because we are concerned about how the legislation may be implemented, not particularly about what is in the legislation itself. That is why we feel it





is important that employers and unions must be aware of the concerns and must build in the required flexibility when developing their pay equity plans.

Mr. Ward: I think it is important that the Pay Equity Commission deal with those things first.

Ms. Main: This is why we recommended the vehicle of education. Obviously, that is a very important formula.

Mr. Ward: I think the crux really is in interpretation.

Mr. Polsinelli: I would like to thank you for a very interesting presentation. It brought to the attention of the committee something that had not been brought to its attention before. I am sure the ministry will analyse your recommendations prior to clause-by-clause debate.

I want to ask you about your recommendation. You indicate that a clause should be added to the bill stating that nothing in the act or the pay equity plan will detract from the rights given to the handicapped under the Human Rights Code. My understanding is that the code has a certain paramountcy over all pieces of legislation, so it would still prevail even if something in this act were interpreted as contravening it. What do you feel this provision in the legislation would add? Do you feel it will give you some greater protection? If that is so, how would it come about?

1730

Ms. Glazier: Number one, most employers are not aware of the amendments that have been brought into the Human Rights Code under Bill 7 and, if they read the amendments, I am not sure they will understand the implications for pay equity.

While you are correct in saying the code overrides this legislation, if an employer were to interpret this bill in such a way that a plan was developed that could give rise to the problems we are stating, the only recourse a person with a disability would have would be to bring a complaint through the Ontario Human Rights Commission. We do not feel that is an adequate means of addressing the concern. The means that should be looked at is prevention.

I do not think we want to have employers developing pay equity plans and then have problems in them, if they could be avoided to begin with. I do not think employers want to be in a position of having complaints brought against them, and they would like to be protected against being put into that position.

Mr. Polsinelli: I agree with what you say and I take it you are of the opinion that the earlier amendments you are requesting, the adding on of the phrase "whether or not accommodation of the needs of an individual employee has been made," would work a small way towards achieving that. I do not want to comment on that, because I do not know what the implications of that would be. I hope the ministry will look at that amendment.

The comment I am making is on the final paragraph you would like added. If you feel there is no greater benefit that is derived by having that paragraph than what is in the code at present, then I do not see the purpose of including it.

Mr. Charlton: It just brings to the attention of everybody the issue when they are dealing with pay equity. That is all. It focuses it.





Mr. Polsinelli: If that is the case, that could also be done by some type of public awareness program advertising the provisions of the code in there. There are many other ways of accomplishing that rather than having another clause in the legislation that goes no further in terms of protecting or guaranteeing the rights.

Ms. Main: Combined with education, it would, obviously, provide more clout and, as Mr. Charlton says, it would focus on concerns we have.

The other thing to keep in mind in our presentation today is that this is a preventive approach. It is the kinds of concerns we have because of our personal experiences and because of the research we have been able to gather as a coalition mandated to focus on these kinds of problems. Given that, it is necessary, perhaps, to underwrite those ideas and to have a little more protection in the legislation, because we have found that that has been very beneficial in the past in other issues with which we have dealt.

Mr. Lupusella: I would like to associate myself with the feelings expressed by Mr. Polsinelli. I think it is fair, at this point, to raise the issue of injured workers who are permanently disabled as a result of accidents on the job and who, after a pension is given to them on a permanent basis, go back into the labour force and have their salary reduced.

How is this legislation going to affect injured workers and persons with disabilities? I am very sympathetic to the issue that was raised before us as a committee. During the four days I have been sitting on this committee, I have noted that organizations and unions that appeared before the committee endorsed the principle of pay equity in the public sector, because there is government intervention to close the gap between people employed by the government and the taxpayers' money.

Persons with disabilities and injured workers who are employed by the private sector may be left out in the end, because there is really no study in the private sector on how pay equity should be applied to them. Maybe I need more of an explanation on how this legislation will affect persons with disabilities and injured workers.

Mr. Chairman: Does a member of the staff wish to respond to that question?

Ms. Marlatt: I think in the previous act and in the Canadian Human Rights Act there is an exemption for rehabilitation jobs and so forth. That kind of exemption is not in here, so those jobs would not be exempt from equal pay or pay equity, but those jobs could still be part of a plan.

Mr. Lupusella: I understand the answer. Taking into consideration injured workers who had a high salary when they were injured and then were permanently disabled and had their wages reduced, what kind of gains are they going to have with the application of this legislation?

Ms. Marlatt: The legislation does not specifically speak to that. It would look at a job and evaluate the skill, effort, responsibility and working conditions. There is also the possibility that if the person was at a higher salary and was no longer able to do the job, the job could be red-circled to preserve that higher salary. There might be a couple of redresses under the act. It speaks to forbidding the reduction of salaries to achieve pay equity; it does not specifically address the situation of injured workers.

Mr. Lupusella: Do you agree with me, then, that in the application



of this legislation, injured workers and persons with disabilities are going to be the losers as a class of people living in our society? Am I correct?

Ms. Marlatt: The earlier comments on people with disabilities were that perhaps the cross-reference or at least educating people to the fact that there are the provisions of the Human Rights Code that are not negated by pay equity may not create a problem for people with disabilities. Injured workers may be a different issue that is not addressed specifically in pay equity. It may be an issue that has to be addressed in another piece of legislation.

Mr. Stevenson: I missed most of your presentation, and we have been chatting here during some of the questioning. This may have already been asked, and if it has been, please forgive me. I will accept a very quick answer in that case.

In reading quickly through your brief, I sense the concern over extra rigidity in the work place for people who already have jobs. I did not see whether you also have an equally great or even greater concern over extra rigidity in the work place and what that might do where an employer is willing to hire even more disabled workers. Is that a concern as well? Have you heard of or seen any hints of that sort of reaction because of this legislation?

Ms. Glazier: That is very much a concern. There may be a disincentive for employers to hire a person with a disability, because it may be that much harder, once the system is set up, if it has a fair amount of rigidity in it. In fact, we were mostly looking at the situation of a new person coming in to a job.

Mr. Stevenson: Do you see any concern that, say, extra costs of correcting the inequalities of pay rates within a business may have gone into ramps or whatever else? Do you see that sort of thing developing as an excuse or as a factual situation in a business?

Ms. Glazier: I certainly hope it will not. The position of the Coalition on Pay Employment Equity for Persons with Disabilities is strongly supportive of pay equity. We would not want to win equality for our people with disabilities by trading that off with any group. The concerns of people with disabilities have to be considered as well

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Mr. Stevenson: So it is mainly a rigidity situation and you feel you need flexibility to address the needs of your interest group.

Ms. Glazier: That is right. We feel both legislation and education are vehicles of achieving that.

Mr. Chairman: I have a couple of questions. Can you give me some indication of the percentage of unemployed among the disabled at the moment in Ontario?

Ms. Clifford: I know that nationally, in the Abella report, it was 80 per cent. I would think that in Ontario, two out of every three disabled persons is unemployed. With more rigidity in the pay equity legislation, the number could possibly go higher because job descriptions may not be flexible for disabled persons and may provide more difficulty for them to obtain employment.





Mr. Chairman: When I mention these things, please do not get the opinion I think we have gone far enough in terms of helping the disabled, because we have not; but there have been some improvements, for example, in housing and transportation needs for the handicapped. There have been some municipalities that have made provision in terms of access to buildings, curb cuts and all those things. Has any of that resulted in a reduction in the number of unemployed, or to put it another way, has it helped to provide you with easier access to the jobs that are available, or is the situation really just on hold in spite of some of those efforts?

Ms. Main: I would say that at this stage we are very happy about the results of what has been achieved in the efforts, and particularly the initiatives of this government, but we say, and with deep respect, it has not gone far enough. Given that, obviously the percentage of disabled people who are employed in various sectors of society reflects that.

With initiatives such as this and education, job readiness training, leadership training among consumer groups, consultation with consumers, the kinds of things we are involved in recommending to the government and working with every sector of society now, it can be achieved but it certainly has not been achieved yet. One of the unwritten messages we are attempting to give the committee today is that we can all work together to achieve those goals and objectives.

In answer to your question, a lot has been done but not enough. If you look at the statistics and the data, it does not reflect them but it does allow access to employment. In any kind of competition in this province today, Ms. Clifford and I, even though we both have a number of requirements, particularly educational background and job experience, probably would be the last ones considered, not because we are not capable of doing the job or do not have the educational requirements or the skills but because reasonable accommodation is required and an employer would look twice at that.

Mr. Chairman: The one question you did not answer yet and I accept everything you have said--I guess I am asking a question in a hopeful way. Has there been any improvement whatever in the percentage of unemployed among the handicapped as a result of things that have been done that are inadequate but are measurable improvements over what we had a decade or two ago, or is the figure relatively static? In other words, a decade ago, was there 80 per cent unemployed among the disabled, which was the figure you gave me, or was it 90 per cent or some other figure? Are we making any gains in that area?

I think everybody on this committee, irrespective of political stripe, would do what we could to help you to achieve what I think are very admirable objectives. We are struggling with the same questions you are struggling with and we want to find whatever solutions you can help us to apply to given situations. I know where we have been and I would like to know how we are going to get to the goal and objective we all want to reach, which is full and complete access for the handicapped, and opportunities in employment and in every walk of life. That is really what we all want. Has there been any improvement at all?

Ms. Main: As I said, I think honestly there has been some improvement, but we have to work together to make it more. If you want percentages, I guess we could look at all kinds of data, but the real facts--Ms. Clifford and I, for instance, do advocacy with people in job readiness training. We could say that one to one, it has not impacted the way I am sure all of us in this room would have liked it to impact in 1987.





Mr. Chairman: I thank you very much. You obviously had the very keen and undivided attention of the members of the committee. They will certainly take into account the comments you have made to us with respect to any protective words we can put in to make sure that your interests are looked after. I do want to thank you on behalf of the committee. I see that Mr. Stevenson is--

Mr. Stevenson: Just before staff pack up--I do not have any questions of the delegation.

Mr. Chairman: Can I release the delegation then? Thank you again for coming before us.

Mr. Stevenson: Very quickly, I want to clarify in my own mind what happens in a--I guess the obvious thing but it could be any business; I am thinking particularly of a farming operation where they might employ, say, two people all year around, but if they are in fruit and vegetables, berries, for example, they might employ 25 people for three weeks. Another example would be where they are growing commercial seed corn, where they might employ two or three people year around, and for a period of three to four weeks, they bring people in by the bus load. It is not uncommon to have a minimum of 60 and as many as 120 or 150 people working on one farm for three weeks. What is the situation there? Those sorts of examples are very common in agriculture.

Mr. Ward: In those examples, though, your pay scales do not differentiate. They might be tied to piece-work.

Mr. Stevenson: The only thing that would come in is if they are in a situation where, let us say, they employ a woman year around as a secretarial office type. Maybe some of these people have a little outlet stand, sort of thing, where a woman may be employed and a man may be employed year around doing field work. It would not at all surprise me that the woman is paid less than the man and might well be ruled to be doing work of equal value. If they have 100 people working for them three weeks a year, would they be brought in under this bill?

Ms. Marlatt: Then it could be 100 people times three over 52. You are looking at an average number of people in the previous year. There would be 100 people times three over 52 to find out if you are under 10 or if you are in any of those calculations.

Mr. Ward: I cannot see that you would be brought in.

Ms. Marlatt: If it falls under casual, then it would not be counted at all. If it is seasonal, then you would go with 100 times three over 52.

Mr. Stevenson: I will try to get some specific examples if I can, and put them past you and see just what the results are.

Mr. Ward: Before we go, if you look at the job evaluation that was done by the Council of Ontario Construction Associations with very specific regard to the methodology on page 6, I think you will find it helpful. I think that is the crux of it.

The committee adjourned at 5:50 p.m.















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